

NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 18-1125, consolidated with No. 18-1143

**United States Court of Appeals
for the District of Columbia Circuit**

LONG BEACH MEMORIAL MEDICAL CENTER D/B/A MEMORIALCARE
LONG BEACH MEDICAL CENTER & MEMORIALCARE
MILLER CHILDREN'S AND WOMEN'S HOSPITAL LONG BEACH,
Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent/Cross-Petitioner,

and,

CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES UNITED,
Intervenor for Respondent.

*On Petition for Review and Cross-Application for Enforcement of
an Order of the National Labor Relations Board • Case No. NLRB-21-CA-157007*

**JOINT APPENDIX
VOLUME I OF III – Pages 1 to 362**

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*Whether these briefs constitute part of the record is a contested issue before the merits panel.

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^{*} Whether these briefs constitute part of the record is a contested issue before the merits panel.



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

June 25, 2018

Mark J. Langer, Esquire
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W., Room 5423
Washington, DC 20001-2866

Re: *Long Beach Memorial Medical Center, d/b/a MemorialCare
Long Beach Medical Center & MemorialCare Miller Children's
and Women's Hospital Long Beach v. NLRB*
D.C. Cir. Nos. 18-1125, 18-1143
Board Case No. 21-CA-157007

Dear Mr. Langer:

I am filing electronically a copy of the certified list of the contents of the agency record in this case.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

NATIONAL LABOR RELATIONS BOARD

1015 Half Street, SE

Washington, DC 20570

(202) 273-2960


Enclosures

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

LONG BEACH MEMORIAL MEDICAL)	
CENTER, D/B/A MEMORIALCARE LONG)	
BEACH MEDICAL CENTER &)	
MEMORIALCARE MILLER CHILDREN'S)	
AND WOMEN'S HOSPITAL LONG BEACH)	
Petitioner/Cross-Respondent)	Nos. 18-1125, 18-1143
)	
v.)	
)	Board Case No.
NATIONAL LABOR RELATIONS BOARD)	21-CA-157007
Respondent/Cross-Petitioner)	
)	

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

Pursuant to authority delegated in Section 102.115 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. § 102.115, I certify that the list set forth in the attached Index, consisting of three volumes, fully describes all documents, transcripts of testimony, exhibits, and other material constituting the record before the Board in Long Beach Memorial Medical Center, Inc., d/b/a Long Beach Memorial Medical Center & Miller Children's and Women's Hospital Long Beach, Case No. 21-CA-157007.


 Gary W. Shinnars
 Executive Secretary
 National Labor Relations Board
 1015 Half Street, SE
 Washington, DC 20570
 (202) 273-2960

June 25, 2018

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**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

LONG BEACH MEMORIAL MEDICAL)	
CENTER, D/B/A MEMORIALCARE LONG)	
BEACH MEDICAL CENTER &)	
MEMORIALCARE MILLER CHILDREN'S)	
AND WOMEN'S HOSPITAL LONG BEACH)	
Petitioner/Cross-Respondent)	Nos. 18-1125, 18-1143
)	
v.)	
)	Board Case No.
NATIONAL LABOR RELATIONS BOARD)	21-CA-157007
Respondent/Cross-Petitioner)	
)	

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2018, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for District of Columbia Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
 Linda Dreeben
 Deputy Associate General Counsel
 NATIONAL LABOR RELATIONS BOARD
 1015 Half Street, SE
 Washington, DC 20570

Dated at Washington, DC
 this 25th day of June 2018

FORM EXEMPT UNDER 44 U.S.C. 3512

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

21-CA-157007

Date Filed

07-28-15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

MemorialCare Health System, d/b/a Long Beach Memorial Medical Center

b. Tel. No. 562-933-2000

c. Cell No.

f. Fax No.

g. e-Mail

h. Number of workers employed
10,000 +

d. Address (Street, city, state, and ZIP code)

2801 Atlantic Avenue
Long Beach, CA 90806

e. Employer Representative

Barry Arbuckle, Ph.D.
President and CEO

i. Type of Establishment (factory, mine, wholesaler, etc.)

Acute Care Hospital

j. Identify principal product or service

Healthcare

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six months, the Employer has unilaterally implemented an overly broad dress code policy that unlawfully interferes, restrains and coerces employees' right to wear union insignia.

By these and other acts, the above-named Employer, through its officers, agents and representatives, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
California Nurses Association/National Nurses United (CNA/NNU)

4a. Address (Street and number, city, state, and ZIP code)

2000 Franklin Street
Oakland, CA 94612

4b. Tel. No. 510-273-2200

4c. Cell No.

4d. Fax No. 510-663-4822

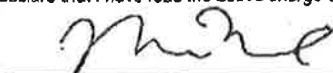
4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By



(signature of representative or person making charge)

Micah Berul, In-House Counsel

(Print/Type name and title or office, if any)

Tel. No. 510-273-2292

Office, if any, Cell No.
510-610-7791

Fax No. 510-663-4822

e-Mail

mberul@calnurses.org

Address 2000 Franklin Street, Oakland, CA 94612

07/28/2015

(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Form NLRB - 501 (2-08)

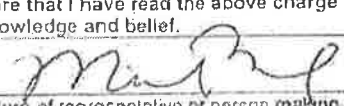
UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
21-CA-157007	09-16-15

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer MEMORIALCARE HEALTH SYSTEM, D/B/A LONG BEACH MEMORIAL MEDICAL CENTER	b. Tel. No. (562)933-2000
	c. Cell No.
d. Address (street, city, state ZIP code) 2801 ATLANTIC AVENUE, LONG BEACH, CA 90806	e. Employer Representative Barry Arbuckle, Ph.D. President and CEO
	f. Fax No.
	g. e-Mail
	h. Dispute Location (City and State) LONG BEACH, CA
i. Type of Establishment (factory, nursing home, hotel) Acute Care Hospital	j. Principal Product or Service Healthcare
	k. Number of workers at dispute location 10,000
l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the past six months, the Employer has: promulgated and maintained an overly broad dress code policy that unlawfully interferes, restrains and coerces employees' right to wear union insignia; disparately enforced the dress code policy with regard to union insignia; and unilaterally implemented the dress code policy without bargaining in good faith with the Union, and without the Union's consent, despite the fact that the dress code policy change was a mid-term modification. Such conduct violates Section 8(a)(5), and additionally independently violates Section 8(a)(1), and is continuing to date. By these and other acts, the Employer has been interfering, restraining and coercing employees in the exercise of their Section 7 rights.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) CALIFORNIA NURSES ASSOCIATION/NATIONAL NURSE UNITED (CNA/NNU)	
4a. Address (street and number, city, state, and ZIP code) 2000 FRANKLIN STREET, OAKLAND, CA 94612	4b. Tel. No. (510)273-2200
	4c. Cell No. (510)610-7791
	4d. Fax No. (510)663-4822
	4e. e-Mail mberul@calnurses.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	Tel. No. (510)273-2200
By: 	Office, if any, Cell No. (510)610-7791
(signature of representative of person making charge)	Fax No. (510)663-4822
Address: 2000 FRANKLIN STREET, OAKLAND, CA 94612	e-Mail mberul@calnurses.org
Print Name and Title MICAH BERUL IN-HOUSE COUNSEL	Date: 9/16/15

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

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FORM EXEMPT UNDER 44 U.S.C. 3512

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
SECOND AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case
21-CA-157007Date Filed
10-19-15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer MemorialCare Health System, d/b/a Long Beach Memorial Medical Center		b. Tel. No. 562-933-2000
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 2801 Atlantic Avenue Long Beach, CA 90806	e. Employer Representative Barry Arbuckle, Ph.D. President and CEO	g. e-Mail
		h. Number of workers employed 10,000 +
i. Type of Establishment (factory, mine, wholesaler, etc.) Acute Care Hospital	j. Identify principal product or service Healthcare	

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
Within the past six months, the Employer has: promulgated and maintained an overly broad dress code policy that unlawfully interferes, restrains and coerces employees' right to wear union insignia; disparately enforced the dress code policy with regard to union insignia; unilaterally implemented the dress code policy without bargaining in good faith with the Union, and without the Union's consent, despite the fact that the dress code policy change was a mid-term modification; and on or about October 7, 2015, harassed a Nurse Representative while disparately enforcing the unlawful dress code policy. Such conduct violates Section 8(a)(5), and additionally independently violates Section 8(a)(1), and is continuing to date.
By these and other acts, the Employer has been interfering, restraining and coercing employees in the exercise of their Section 7 rights.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
California Nurses Association/National Nurses United (CNA/NNU)

4a. Address (Street and number, city, state, and ZIP code) 2000 Franklin Street Oakland, CA 94612	4b. Tel. No. 510-273-2200
	4c. Cell No.
	4d. Fax No. 510-663-4822
	4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By 
(signature of representative or person making charge)

Micah Berul, In-House Counsel
(Print/type name and title or office, if any)

Tel. No. 510-273-2292

Office, if any, Cell No.
510-610-7791

Fax No. 510-663-4822

e-Mail
mberul@calnurses.org

Address 2000 Franklin Street, Oakland, CA 94612

10/19/2015
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

LONG BEACH MEMORIAL MEDICAL CENTER,
INC. D/B/A LONG BEACH MEMORIAL
MEDICAL CENTER & MILLER CHILDREN'S
AND WOMEN'S HOSPITAL LONG BEACH

and

Case 21-CA-157007

CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSES UNITED (CNA/NNU)

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by California Nurses Association/National Nurses United (CNA/NNU) (Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Memorialcare Health System, D/B/A Long Beach Memorial Medical Center, whose correct name is Long Beach Memorial Medical Center, Inc. D/B/A Long Beach Memorial Medical Center & Miller Children's and Women's Hospital (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Union on July 28, 2015, and a copy was served on Respondent by regular mail on July 30, 2015.
- (b) The first amended charge in this proceeding was filed by the Union on September 16, 2015, and a copy was served on Respondent by regular mail on September 17, 2015.

(c) The second amended charge in this proceeding was filed by the Union on October 19, 2015, and a copy was served on Respondent by regular mail on October 21, 2015.

2. (a) At all material times, Respondent, a health-care institution, whose primary facility with adjacent buildings is located at or within the proximity of 2801 Atlantic Avenue, Long Beach, California, herein the Long Beach facility, has been engaged in providing health-care services and has been an independent nonprofit subsidiary corporation of Memorial Care Health System (MHS).

(b) In conducting its operations described above in paragraph 2(a), during the 12-month period ending October 30, 2015, a representative period, Respondent derived gross revenues in excess of \$250,000, and purchased and received at its Long Beach, California facility goods valued in excess of \$50,000 directly from points outside the State of California.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and a health-care institution within the meaning of Section 2(14) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Shawn Kang

Executive Human Resources Director

Cynthia Rocha	Human Resources Director
Colleen Coonan	Director of General Pediatrics
Robin Johnson	Assistant Unit Manager

6. Since at least July 1, 2015, Respondent has maintained the following rule which is contained in Respondent's Dress Code and Grooming Standards Policy/Procedure #318 (dated March 3, 2014):

"Only MHS approved pins, badges, and professional certifications may be worn."

7. (a) About July 9, 2015, Respondent, by Colleen Coonan, in the Children's Department of the Long Beach facility, prohibited an employee from wearing a badge reel holder containing Union insignia while permitting employees to wear badge reel holders containing other insignia.

(b) About October 7, 2015, Respondent, by Robin Johnson, in the Outpatient Surgery Department of the Long Beach facility, prohibited an employee from wearing a badge holder containing Union insignia while permitting employees to wear badge reel holders containing other insignia.

8. By the conduct described above in paragraphs 6 and 7, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be received by this office on or before January 12, 2016, or postmarked on or before January 11, 2016.

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or

if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **March 14, 2016**, at 1:00 p.m., PST at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Ninth Floor, Hearing Room 902, Los Angeles, CA, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Los Angeles, California, this 29th day of December 2015.

Attachments



Olivia Garcia, Regional Director
National Labor Relations Board, Region 21
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 21-CA-157007

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Epstein Becker & Green, P.C.
Attn.: Adam C. Abrahms, Attorney at Law
Attn.: Kat Paterno, Attorney at Law
1925 Century Park East, Suite 500
Los Angeles, CA 90067-2706

Micah Berul, Legal Counsel
California Nurse Association / National
Nurses United (CNA/NNU)
2000 Franklin Street
Oakland, CA 94612

Long Beach Memorial Medical Center, Inc.
d/b/a Long Beach Memorial Medical Center
& Miller Children's Hospital Long Beach
2801 Atlantic Avenue
Long Beach, CA 90806

Cynthia Hanna, Labor Representative
California Nurses Association/National
Nurses United (CNA/NNU)
225 West Broadway, Suite 500
Glendale, CA 91204

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

(OVER)

Form NLRB-4668
(6-2014)

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

LONG BEACH MEMORIAL MEDICAL
CENTER INC. d/b/a LONG BEACH MEMORIAL
MEDICAL CENTER AND MILLER
CHILDREN'S & WOMEN'S HOSPITAL LONG
BEACH

-and-

CALIFORNIA NURSES
ASSOCIATION/NATIONAL NURSES UNITED
(CNA/NUU)

Case 21-CA-157007

**LONG BEACH MEMORIAL MEDICAL CENTER, INC.'S ANSWER TO THE
COMPLAINT**

Adam C. Abrahms, Esq.
Kathleen F. Paterno, Esq.
Epstein Becker & Green, P.C.
1925 Century Park East, Ste. 500
Los Angeles, CA 90067
Attorneys for Long Beach Memorial Medical
Center, Inc.

Pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Long Beach Memorial Medical Center, Inc., which owns and operates Long Beach Memorial Medical Center and Miller Children's & Women's Hospital Long Beach (collectively "LBMMC"), by its attorneys Epstein Becker & Green, P.C., hereby answers the Complaint and Notice of Hearing ("Complaint") in the above-captioned matter as follows:

Preamble: With respect to the allegations in the first sentence of the Preamble Paragraph of the Complaint, LBMMC denies knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies the allegations. With respect to the allegations in the second sentence of the Preamble, LBMMC denies that it is a proper respondent to this action. LBMMC, upon information and belief, denies that there is any legal entity in existence named "Memorialcare Health System, D/B/A Long Beach Memorial Medical Center" and thus also denies that such nonexistent entity's "correct name" is "Long Beach Memorial Medical Center, Inc. D/B/A Long Beach Memorial Medical Center & Miller Children's and Women's Hospital." Upon information and belief, LBMMC admits that the correct legal name of Long Beach Memorial Medical Center, Inc.'s parent corporation is Memorial Health Services ("MHS"), which LBMMC admits, upon information and belief, is a nonprofit corporation with its headquarters in Fountain Valley, California. LBMMC admits that it is a separate and distinct legal entity from MHS, and both LBMMC and MHS have separate governing Boards of Directors, separate executive officers, separate finances, separate legal addresses, etc.

LBMMC denies that it is a proper respondent in this action, and it also denies that it has in any way violated the National Labor Relations Act, as amended, (the "Act") as is alleged in the Preamble of the Complaint.

1(a). The Charge in Case 21-CA-157007 filed by the Union on July 28, 2015, was not filed against LBMMC, and thus LBMMC was not properly served. LBMMC denies that it is a proper respondent in this action and denies the allegations contained in Paragraph 1(a) of the Complaint

1(b). The First Amended Charge in Case 21-CA-157007 filed by the Union on September 16, 2015, was not filed against LBMMC, and thus LBMMC was not properly served. LBMMC denies that it is a proper respondent in this action and denies the allegations contained in Paragraph 1(b) of the Complaint.

1(c). The Second Amended Charge in Case 21-CA-157007 filed by the Union on October 19, 2015 was not filed against LBMMC, and thus LBMMC was not properly served. LBMMC denies that it is a proper respondent in this action and denies the allegations contained in Paragraph 1(c) of the Complaint.

2(a). LBMMC admits all the allegations in Paragraph 2(a) of the Complaint, except LBMMC denies that it is a proper respondent in this action or that it is an independent nonprofit subsidiary corporation of "Memorial Care Health System," which upon information and belief, is merely a d/b/a of LBMMC's parent corporation, MHS.

2(b). LBMMC denies that it is a proper respondent in this action, but admits the remaining allegations contained in Paragraph 2(b) of the Complaint.

3. LBMMC denies that it is a proper respondent in this action, but admits the remaining allegations contained in Paragraph 3 of the Complaint.

4. Upon information and belief, LBMMC admits the allegations contained in Paragraph 4 of the Complaint.

5. LBMMC denies that it is a proper respondent in this action. Regarding the allegations contained in Paragraph 5 of the Complaint, LBMMC denies that Shawn Kang has been employed at all material times by LBMMC as Executive Human Resources Director but admits that Shawn Kang has been employed at all material times by LBMMC as Executive Director, Human Resources. Regarding the allegations contained in Paragraph 5 of the Complaint, LBMMC denies that Cinthya Rocha has been employed at all material times by LBMMC as Human Resources Director but admits that Cinthya Rocha has been employed at all material times by LBMMC as Director, Human Resources. LBMMC admits all remaining allegations contained in Paragraph 5 of the Complaint.

6. LBMMC denies that it is a proper respondent in this action. LBMMC admits that it has adopted and maintained "Dress Code and Grooming Standards" Policy/Procedure # 318 (dated March 3, 2014) and admits that such Policy contains various rules and guidelines, including but not limited to the rule alleged in Paragraph 6 of the Complaint, some of which are applicable to some LBMMC employees at certain times.

7(a). LBMMC denies the allegations contained in Paragraph 7(a) of the Complaint.

7(b). LBMMC denies the allegations contained in Paragraph 7(b) of the Complaint.

8. LBMMC states that Paragraph 8 contains legal conclusions to which no response is required. To the extent that a response may be required, LBMMC denies the allegations contained in Paragraph 8 of the Complaint.

9. LBMMC states that Paragraph 9 contains legal conclusions to which no response is required. To the extent that a response may be required, LBMMC denies the allegations contained in Paragraph 9 of the Complaint.

AFFIRMATIVE DEFENSES

1. LBMMC has never been properly named as a party in this action, was never properly and legally served, and thus LBMMC has not been afforded adequate Due Process.
2. The Complaint in its entirety, and each of the Paragraphs alleged therein, must be dismissed as the Complaint was not issued in accordance with, and is thus not compliant with, NLRB Rules, Regulations and/or Manuals, and/or federal law.
3. The allegations contained in the Complaint alleging violations of the Act, particularly those allegations improperly brought against LBMMC, fail to state a cause of action upon which relief can be granted under the Act.
4. The allegations contained in the Complaint seek relief that is improper and is not authorized under the Act.
5. All actions engaged in by LBMMC were for legitimate reasons that were not motivated by, or pretexts for, an unlawful animus.

WHEREFORE, LBMMC respectfully requests that the Complaint be dismissed in its entirety.

Respectfully submitted,

EPSTEIN, BECKER & GREEN, P.C.

By: 
Kathleen F. Paterno

Adam C. Abrahms, Esq.
Kathleen F. Paterno, Esq.
Epstein Becker & Green, P.C.
1925 Century Park East, Ste. 500
Los Angeles, CA 90067
Attorneys for Long Beach Memorial Medical
Center, Inc.

CERTIFICATE OF SERVICE

I, Ellie Cook, hereby certify, under penalty of perjury, that I am not a party to this action, I am over 18 years of age, and on January 11, 2016 I caused a true copy of the attached **Long Beach Memorial Medical Center, Inc.'s Answer to the Complaint** to be served by U.S. Mail upon the following individuals:

**Micah Berul, Legal Counsel
California Nurse Association/
National Nurses United (CNA/NNU)
2000 Franklin Street
Oakland, CA 94612**

**Cynthia Hanna, Labor Representative
California Nurse Association/
National Nurses United (CNA/NNU)
222 W. Broadway, Suite 500
Glendale, CA 91204**

I served the document described above on **January 11, 2016.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/11/16
DATE

Ellie Cook
(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

**LONG BEACH MEMORIAL MEDICAL CENTER
INC. D/B/A LONG BEACH MEMORIAL MEDICAL
CENTER & MILLER CHILDREN'S AND WOMEN'S
HOSPITAL LONG BEACH**

and

Case 21-CA-157007

**CALIFORNIA NURSES ASSOCIATION /
NATIONAL NURSES UNITED (CNA/NU)**

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from March 14, 2016 at 1:00 pm to 1:00 pm on **April 19, 2016** at Hearing Room 902, 888 S Figueroa Street, Ninth Floor, Los Angeles, CA 90017-5449. The hearing will continue on consecutive days until concluded.

Dated: March 1, 2016



Olivia Garcia, Regional Director
National Labor Relations Board, Region 21
888 S Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

LONG BEACH MEMORIAL MEDICAL CENTER
INC. D/B/A LONG BEACH MEMORIAL MEDICAL
CENTER & MILLER CHILDREN'S AND WOMEN'S
HOSPITAL LONG BEACH

and

Case 21-CA-157007

CALIFORNIA NURSES ASSOCIATION /
NATIONAL NURSES UNITED (CNA/NNU)

AFFIDAVIT OF SERVICE OF ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **March 1, 2016**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

Micah Berul, Legal Counsel
California Nurse Association/National
Nurses United (CNA/NNU)
155 Grand Avenue
Oakland, CA 94612

Adam C. Abrahms, Attorney at Law
Kat Paterno, Attorney at Law
Epstein Becker & Green, P.C.
1925 Century Park East, Suite 500
Los Angeles, CA 90067-2706

Cynthia Hanna, Labor Representative
California Nurses Association/National
Nurses United (CNA/NNU)
225 West Broadway, Suite 500
Glendale, CA 91204

Long Beach Memorial Medical Center, Inc
d/b/a Long Beach Memorial Medical
Center & Miller Children's & Women's
Hospital Long Beach
2801 Atlantic Avenue
Long Beach, CA 90806

March 1, 2016

Date

Aide Carretero, Designated Agent of NLRB

Name


Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

**LONG BEACH MEMORIAL MEDICAL CENTER
INC. D/B/A LONG BEACH MEMORIAL
MEDICAL CENTER & MILLER CHILDREN'S
AND WOMEN'S HOSPITAL LONG BEACH**

and

Case 21-CA-157007

**CALIFORNIA NURSES
ASSOCIATION/NATIONAL NURSES UNITED
(CNA/NU)**

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from April 19, 2016 at 1:00 pm to 1:00 pm on **May 23, 2016** at Hearing Room 902, 888 S Figueroa Street, Ninth Floor, Los Angeles, CA 90017-5449. The hearing will continue on consecutive days until concluded.

Dated: April 14, 2016



Olivia Garcia, Regional Director
National Labor Relations Board, Region 21
888 S Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

In the Matter of:

LONG BEACH MEMORIAL MEDICAL
CENTER INC. D/B/A LONG BEACH
MEDICAL CENTER & MILLER
CHILDREN'S AND WOMEN'S
HOSPITAL LONG BEACH,

and

CALIFORNIA NURSES
ASSOCIATION/NATIONAL NURSES
UNITED (CNA/NNU) .

Case No. 21-CA-157007

The above-entitled matter came on for hearing, pursuant to notice, before **JEFFREY WEDEKIND**, Administrative Law Judge, at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Los Angeles, California 90017, on **Monday, May 23, 2016, at 1:13 p.m.**

A P P E A R A N C E S**On behalf of the General Counsel:****LINDSAY R. PARKER, ESQ.****MOLLY KAGEL, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 21
888 S. Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449
Tel. 213-894-5449
Fax. 213-894-2778

On behalf of the Charging Party:**MICAH BERUL, ESQ.**

NATIONAL NURSES ORGANIZING COMMITTEE (NNOC)
155 Grand Avenue
Oakland, CA 94612
Tel. 510-273-2292
Fax. 510-663-4822

On behalf of the Respondent:**ADAM C. ABRAHMS, ESQ.****KAT PATERNO, ESQ.**

EPSTEIN BECKER GREEN PC
1925 Century Park East, Suite 500
Los Angeles, CA 90057
Tel. 310-557-9559
Fax. 310-557-9573

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Cinthya Rocha	36				
Brandy Welch	49	70	96/103	99/104	
Theresa Stewart	106	135			

E X H I B I T S**EXHIBIT****IDENTIFIED****IN EVIDENCE****General Counsel:**

GC-1 (a) through GC-1 (y)	6	6
GC-2	9	9
GC-3	40	40
GC-4	40	40
GC-5	40	40
GC-6	40	40
GC-7	60	60
GC-8	60	60
GC-9	60	60
GC-10	60	60
GC-11	60	60
GC-12	69	69
GC-13	69	69
GC-14	69	69
GC-15	131	131
GC-16	131	131
GC-17	131	131
GC-18	131	131
GC-19	131	131
GC-20	131	131
GC-21	131	131
GC-22	135	135

1 P R O C E E D I N G S

2 JUDGE WEDEKIND: This is the case of Long Beach Memorial
3 Medical Center. Case Number is 21-CA-157007. My name is
4 Jeffrey Wedekind, I'm the Administrative Law Judge that's been
5 assigned to the case. I'm formally assigned to the San
6 Francisco office, so any briefs, motions, et cetera should be
7 filed with that office, electronically, preferably.

8 Counsel, would you like to introduce yourself at this
9 time, starting with the General Counsel.

10 MS. PARKER: Lindsay Parker, counsel for the General
11 Counsel.

12 MS. KAGEL: Molly Kagel, counsel for the General Counsel.

13 MR. BERUL: Micah Berul, counsel for Charging Party,
14 Union.

15 MR. ABRAHMS: Adam Abrahms, counsel for Long Beach
16 Memorial Medical Center, Inc.

17 MS. PATERNO: And Kat Paterno, attorney for Long Beach
18 Memorial Medical Center, Inc.

19 JUDGE WEDEKIND: All right. Thank you. General Counsel,
20 would you like to proffer the formal papers?

21 MS. PARKER: Yes, I would, Your Honor. Have all the
22 parties had a chance to look them over? Any questions or
23 concerns?

24 So, I'd like to offer into evidence the formal papers in
25 this case, they have been marked for identification as General

1 Counsel's Exhibits 1(a) through 1(y) with 1(y) being an index
2 and description of the documents and this exhibit has been
3 shown to all parties.

4 JUDGE WEDEKIND: Any objections?

5 MR. ABRAHMS: No objections.

6 MR. BERUL: No objections.

7 JUDGE WEDEKIND: Okay. It's received.

8 **(General Counsel Exhibit Number 1(a) through 1(y) Received into**
9 **Evidence)**

10 JUDGE WEDEKIND: Any other documents at this time? Any
11 stipulated documents? Anything?

12 MS. PARKER: We have no stipulated documents.

13 JUDGE WEDEKIND: Okay. All right. Why don't we talk
14 about the subpoenas then. You said you had a question about
15 the subpoenas?

16 MS. PARKER: I could read the subpoena paragraph and then
17 ask Respondent to answer which documents are responsive that
18 they provided by the Bate Stamp numbers --

19 JUDGE WEDEKIND: Well, they have a copy, you don't need to
20 read it. Just go by number.

21 MS. PARKER: Okay.

22 MS. PATERNO: Go by title. Can you do it by title?

23 MS. PARKER: Okay. So, documents pursuant to subpoena,
24 paragraph 3?

25 MS. PATERNO: It would be LBM000001 through 000009.

1 MS. PARKER: Thank you. All right. And subpoena,
2 paragraph number 4?

3 MS. PATERNO: The same numbers.

4 MS. PARKER: Subpoena paragraph 6?

5 MS. PATERNO: Number 6?

6 MS. PARKER: Uh-huh.

7 MS. PATERNO: LBM000010 through LBM000014.

8 MS. PARKER: And 7?

9 MS. PATERNO: I'm sorry, 14 was wrong it should be 13,
10 correct it to 13.

11 MS. PARKER: Okay. So, for subpoena paragraph 6 you're
12 saying through 13?

13 MS. PATERNO: 6 ends at 13. Paragraph 7 starts with LBM
14 four zeros 14, 000014 and ends at LBM000016. Actually, you
15 know what -- and then it goes on, sorry, including in paragraph
16 7 --

17 MS. PARKER: 7?

18 MS. PATERNO: -- goes all the way to LBM000032. So, 14 to
19 32.

20 MS. PARKER: Okay. And subpoena paragraph 8?

21 MS. PATERNO: I think it's LBM000033 through 000066.

22 MS. PARKER: And subpoena paragraph number 9?

23 MR. ABRAHMS: In addition to that would be the documents
24 that were also -- 6 and 7. The documents produced with 6 and 7
25 would also be included in it.

1 MS. PARKER: In 8?

2 MR. ABRAHMS: Yes.

3 MS. PARKER: Okay.

4 MS. PATERNO: And then responsive to final paragraph 10?

5 MS. PARKER: I think nine, we're still doing nine.

6 MS. PATERNO: Would be, I guess, the last four -- so,

7 responsive to that would be LBM000010 through LBM000016 and

8 also LBM67 through 70.

9 MS. PARKER: Okay. And were any documents provided

10 responsive to paragraph 10?

11 MS. PATERNO: No.

12 MS. PARKER: Paragraph 11?

13 MS. PATERNO: No.

14 MS. PARKER: Paragraph 12?

15 MS. PATERNO: No.

16 MS. PARKER: And, Your Honor, for clarity sake I'd like to

17 offer my subpoena into the record just to show which documents,

18 to the extent the 10 through 12 were not -- there were no

19 documents responsive to those paragraphs, I'd like to enter a

20 subpoena on the record or I can read those paragraphs out loud.

21 JUDGE WEDEKIND: What was the reason there were no

22 documents provided on 10 through 12?

23 MR. ABRAHMS: They don't exist.

24 MS. PATERNO: Yeah.

25 JUDGE WEDEKIND: Is that on the record?

1 MS. PATERNO: It was stated in the --

2 JUDGE WEDEKIND: Okay. All right. So, if there's no
3 objections -- any objection to having the subpoena on the
4 record?

5 MR. ABRAHMS: No.

6 JUDGE WEDEKIND: Okay. That's fine.

7 MS. PARKER: I'd like to offer into evidence General
8 Counsel's subpoena duces tecum as General Counsel's Exhibit 1.

9 JUDGE WEDEKIND: 2?

10 MS. PARKER: 2. I'm sorry, 2.

11 JUDGE WEDEKIND: It's received.

12 **(General Counsel Exhibit Number 2 Received into Evidence)**

13 JUDGE WEDEKIND: All right. Any other preliminary
14 matters? Anything at all before we get started with opening
15 statements?

16 MS. PARKER: I actually have a couple of preliminary
17 matters. We can do it after the opening or --

18 JUDGE WEDEKIND: Probably do them now.

19 MS. PARKER: Okay. So, there was one issue with respect
20 to the subpoena production, complaint paragraph 6 alleges the
21 unlawful maintenance of a policy, which we understood the most
22 recent version of that policy to be in March 2014, but there
23 appears to be a more recent version dated July 7th, 2014, it's
24 Bate Stamped 4 through 6 and is part of Respondent's subpoena
25 production. So, we'd like to make a request to amend the

1 complaint just to include this revised version and paragraph 6.

2 JUDGE WEDEKIND: To substitute it?

3 MS. PARKER: We could substitute it or --

4 JUDGE WEDEKIND: It's the same -- exact same --

5 MS. PARKER: It appears to be --

6 JUDGE WEDEKIND: -- the same title?

7 MS. PARKER: The same title, it has a more updated date,
8 it appears to be, as far as I can tell.

9 JUDGE WEDEKIND: Any objection to that?

10 MR. ABRAHMS: No objection to that.

11 MR. BERUL: My position would be it should augment rather
12 than replace without having to change it word for word.

13 JUDGE WEDEKIND: Well -- because you don't -- we don't
14 know yet which one was in effect or you just -- you don't want
15 to accept it at face value or?

16 MR. BERUL: Well, it's primarily the latter and just if
17 you could --

18 MS. PARKER: We could propose, you know, to say since at
19 least July 1st, 2015, Respondent has maintained the following
20 rule which is contained in Respondent's dress code and grooming
21 standards policy procedure 318, dated March 3rd, 2014 and
22 revised July 7th, 2014.

23 MR. BERUL: Right. And it still has the same language --
24 that's acceptable.

25 JUDGE WEDEKIND: Is that a correct statement?

1 MR. ABRAHMS: The way she stated it I'm not sure if it's
2 -- the policy has been around for some time, it's gone through
3 several revisions, at least the last six years or so of which
4 have been provided to counsel for General Counsel. So, I'm not
5 quite -- I don't believe this would be considered a revision to
6 the March policy. I think this would be the next revision in
7 an ongoing policy.

8 So, the way that it was just stated probably would not be
9 completely accurate. That policy number, 318 --

10 JUDGE WEDEKIND: Uh-huh.

11 MR. ABRAHMS: -- was most recently revised in July of
12 2014, but prior to that it was most recently revised in March
13 of 2014 and prior to that there were some other dates in which
14 it had been revised.

15 JUDGE WEDEKIND: Okay. Just a couple things, General
16 Counsel controls the theory of the complaint, so even if you
17 have an objection it may not make any difference.

18 Second, why do we even need a date in the complaint?

19 MS. PARKER: Well, to the extent that this one --

20 JUDGE WEDEKIND: You're alleging that Number 318 was in
21 existence?

22 MS. PARKER: Correct.

23 JUDGE WEDEKIND: Okay. But --

24 MS. PARKER: To the extent that the March version became
25 obsolete and the July 7th was the one that became controlling

1 after that, we would just want to make sure we have the most
2 recent version of the policy.

3 JUDGE WEDEKIND: But the language that's in the complaint
4 is the same?

5 MS. PARKER: It's the same language.

6 JUDGE WEDEKIND: Okay.

7 MR. ABRAHMS: There were changes to the policy, but
8 they're not relevant or germane to these proceedings.

9 JUDGE WEDEKIND: Okay. Well, I'm going to -- there's no
10 real objection from the Company, so I'm going to grant the
11 request to amend the complaint in accordance with whatever your
12 last statement was.

13 Anything else?

14 MS. PARKER: And then just one final clarification. In
15 the Respondent's answer to our complaint, it was a little
16 confusing as to -- they denied the way that we had articulated
17 to corporate structure of the Respondent. And if we could just
18 get a stipulation on the record as to the proper way to
19 articulate the corporate structure? I think you had denied --
20 I didn't know if we had gotten the name wrong --

21 MR. ABRAHMS: Yeah, this is baffling to me that this
22 complaint is not -- that we don't have the right names on the
23 complaint. There was a motion on this to the board --

24 JUDGE WEDEKIND: Uh-huh.

25 MR. ABRAHMS: -- the charge has been against -- the charge

1 was against Memorial Care, which is a D/B/A of Memorial Health
2 System. We have been over and over in writing with the region
3 trying to explain to them that that is a parent company, it is
4 not a D/B/A of Long Beach Memorial Medical Center, Inc.

5 Long Beach Memorial Medical Center, Inc. is a standalone
6 wholly owned subsidiary of Memorial Health System.

7 The charge, for some reason, was brought against the non-
8 entity and notwithstanding our attempts to try to clarify that,
9 there's been some issues. So, the way that the caption of the
10 complaint itself reads, it is accurate, Long Beach Memorial
11 Medical Center, Inc. does business as Long Beach Memorial
12 Medical Center & Miller Children's and Women's Hospital Long
13 Beach, so that's accurate. But the actual way that it's stated
14 in the preamble is not accurate, because Memorial Care Health
15 System is not a -- that's not the correct name -- the way
16 that's stated is not accurate. Memorial Care is a D/B/A of
17 Memorial Health System, which is the parent corporation to Long
18 Beach Memorial Medical Center, Inc.

19 MS. PARKER: So, then could we stipulate that Respondent
20 is an independent non-profit subsidiary corporation of its
21 parent corporation, Memorial Health Services? Is that
22 accurate?

23 MR. ABRAHMS: Yes, that's accurate.

24 MS. PARKER: If we could stipulate to that, that's fine
25 with General Counsel.

1 JUDGE WEDEKIND: Okay. Any objection from the Union? Are
2 you joining that stipulation?

3 MR. BERUL: I'm not joining, but no objection.

4 JUDGE WEDEKIND: Okay. All right. I'm glad to hear the
5 caption stays the same.

6 Anything else?

7 MS. PARKER: Those were all the preliminary matters, Your
8 Honor.

9 JUDGE WEDEKIND: Anything from the Union or the Company?

10 MR. BERUL: No, sir.

11 MR. ABRAHMS: Not right now.

12 JUDGE WEDEKIND: Okay. Does anybody want a sequestration
13 order in this proceeding?

14 MR. ABRAHMS: Yes.

15 JUDGE WEDEKIND: I'll issue it now, because I prefer to
16 issue it before the opening statements. So, here's the order
17 in case there's anybody in the room that this applies to.

18 The order is being issued consistent with Greyhound Lines
19 319 NLRB 554, 1995. The order imposes, essentially, two
20 restrictions on all witnesses. First, they can only be in the
21 courtroom when they're testifying. Second, they can't discuss
22 their testimony with any other witness or potential witness in
23 the proceeding, either the testimony that they're going to give
24 or the testimony that they've already given.

25 We don't have any discriminitities in this proceeding,

1 anybody who's been discharged, things like that, so that
2 exception doesn't apply. With respect to counsel, you can't
3 discuss the testimony of -- discuss with your witness, the
4 testimony of your other witnesses. The exception is that you
5 can discuss testimony of witnesses for the other side, but not
6 your own witnesses. And it is your job to police the
7 sequestration order, so if you see somebody come in, please
8 take a look and see if it's someone who shouldn't be here.

9 Any questions about the order?

10 MR. ABRAHMS: Just to clarify that the party
11 representatives --

12 JUDGE WEDEKIND: Yes.

13 MR. ABRAHMS: -- will be --

14 JUDGE WEDEKIND: Right.

15 MR. ABRAHMS: -- they get to stay, but they're --

16 JUDGE WEDEKIND: Thank you. So, who's your party
17 representative?

18 MR. ABRAHMS: Cinthya Rocha.

19 JUDGE WEDEKIND: And your position?

20 MS. ROCHA: Director of Human Resources.

21 JUDGE WEDEKIND: Okay. Thank you. And on the other side,
22 who do we have?

23 MR. BERUL: Cinthya Hannah. And your title, Cinthya?

24 MS. HANNAH: Lead Labor Representative.

25 JUDGE WEDEKIND: For?

1 MR. BERUL: California Nurses Association.

2 JUDGE WEDEKIND: California Nurses. Okay. Thank you.

3 Any other objections, questions about the order?

4 MS. PARKER: No, Your Honor.

5 JUDGE WEDEKIND: Okay. Do we have any witnesses in the
6 proceeding, they should leave at this point.

7 I would ask you to leave if you would.

8 All right. Are we ready to do opening statements?

9 MS. PARKER: We are and Ms. Kagel is going to deliver the
10 opening statement.

11 JUDGE WEDEKIND: Thank you.

12 MS. KAGEL: Your Honor, General Counsel intends to show
13 that the Respondent violated the Act in two ways. First, it
14 maintained an overly broad policy that interferes with
15 employees right for a Union insignia.

16 Second, Respondent has prohibited employees from wearing
17 Union insignia while employees to wear other non-hospital
18 affiliated insignia on their uniforms. In doing so, the
19 Respondent has constrained its employees Section 7 rights under
20 the Act.

21 The Respondent, Long Beach Memorial Medical Center is an
22 independent non-profit and subsidiary corporation of its parent
23 corporation, Memorial Health Services and it provides health
24 care services to the Long Beach area.

25 It has a long standing collective bargaining relationship

1 with the California Nurses Association/National Nurses United,
2 the Union that represents the hospital's registered nurses.

3 Now, as alleged in paragraph 6 of the complaint,
4 Respondent's dress code policy and procedure number 318 states
5 that only hospital badges, pins and professional certifications
6 can be worn. Policy number 318 also unlawfully leaves it at
7 Respondent's discretion to approve insignia worn by employees.

8 Now, this facial unlawful policy, which is admittedly
9 maintained by the Respondent restricts employees statutory
10 rights to wear Union insignia.

11 Additionally, as alleged in paragraph 6 of the complaint,
12 that evidence will also prove that Respondent fixated on Union
13 insignia when it instructed two employees to remove Union
14 issued badge reel holders. Now, badge reel holder is a small
15 circular clip about an inch in diameter with a retractable
16 string where employees can attach their identification badges
17 for easy access throughout the work day.

18 Respondent prohibited employees from wearing Union badge
19 reel holders while allowing employees to wear other non-
20 hospital affiliated badge reel holders and other types of
21 insignia.

22 We will then introduce evidence that shows that the
23 Respondent regularly allowed employees to embellish their
24 badges and badge reel holders with pins, stickers and other
25 decorations.

1 Respondent's Disparate treatment of employees in this
2 regard is unlawful as it infectively inhibits employees from
3 engaging in the rights prescribed to them under Section 7 of
4 the Act.

5 Now, Board law has long established that employees have a
6 right to wear Union insignia at work in the absence of special
7 circumstances. In the health care setting, these special
8 circumstances exist when it's necessary to avoid the disruption
9 of health care operations or the disturbance of patients.

10 The evidence with show that employees have regularly worn
11 badge reel holders not specifically approved by Respondent
12 without issue.

13 Furthermore, the Union badge reel holders at issue in this
14 case are only inscribed with the Union logo, are small,
15 innocuous and similar in appearance, size and function to those
16 issued by the Respondent.

17 Because of this the General Counsel asks that Your Honor
18 request -- grant the request of relief listed in the complaint.

19 JUDGE WEDEKIND: Okay. Thank you. Anything from the
20 Union at this time?

21 MR. BERUL: Well, Ms. Kagel did a nice job summarizing
22 things. I would agree that this is just a flat out, facially
23 unlawful policy. That unless Respondent is trying to move the
24 law in this area, it is a very simple case analytically I would
25 contend.

1 I'd also like to stress and agree with what Ms. Kagel
2 stated with regard to the disparately enforcement fixating on
3 the Union insignia. There's also been a fixation on a long
4 term nurse activist in the Union and I believe it's referenced
5 in the complaint itself.

6 While it doesn't constitute discrimination -- paragraph 7,
7 initially alleged as harassment and as the evidence will come
8 out, I think Your Honor will get a feel for how Respondent has
9 attempted to not only maintain an unlawful policy but to do so
10 with particular disdain for the Union.

11 And I'm just going to conclude with, you know, as you can
12 see from the pleadings to the board on the motion for -- to
13 call judgment, I anticipate Respondent trying to take a simple
14 case and turn it into something very confusing here, but I urge
15 Your Honor to bear in mind that the core principles and the Act
16 here that are quite long standing and I, frankly, don't know
17 why we're here without the settlement.

18 JUDGE WEDEKIND: Okay. Thank you. Would you like to make
19 a statement at this time or --

20 MR. ABRAHMS: Yes, Your Honor, appreciate it.

21 JUDGE WEDEKIND: Thank you.

22 MR. ABRAHMS: And actually contrary to counsel for the
23 Charging Party, concern, I think -- but we agree that this case
24 is simple and straight forward and it does take an
25 understanding of what is applicable to the situation at this

1 particular hospital and what is in the charge, what is in the
2 complaint and what is not. And I think that's really what is
3 important before we start hearing evidence, is to make sure
4 that we understand what this case is about and what it's not
5 about.

6 First, what it is about. It's about two very simple
7 questions, Question Number 1, does the hospital's mere
8 maintenance of policy 318 and the very limited statement that
9 only quote "approved pins, badges and professional
10 certifications may be worn", violate Section 7 rights.

11 I think the evidence that we'll present will establish
12 that no reasonable reading of that rule in this hospital could
13 be found to interfere with any right under the Act.

14 The second question is equally straight forward and simply
15 requires Your Honor to determine whether on two specific
16 occasions the hospital disparately enforced what would be
17 referred to as its uniform and appearance policies. These are
18 different policies than 318 and whether -- specifically,
19 whether there was disparate enforcement of those policies valid
20 and unchallenged requirement that only hospital badge reels may
21 be worn as part of the registered nurses uniform, the evidence
22 will show that the hospital consistently enforced its uniform
23 badge rule requirement.

24 Those are the only two questions in this case and it's
25 been -- and all that it's about. Unfortunately, because I do

1 think there is some obfuscation going on here, it's equally
2 important to understand what this case is not about. This case
3 is not about any allegation the hospital unilaterally or
4 improperly implemented any policy or otherwise failed in any
5 bargaining obligations. Though there were allegations made,
6 those were withdrawn and there's nothing about those -- about
7 that in this case.

8 This case is also not about the lawfulness of what we will
9 talk -- what is called the uniform policy or the lawfulness of
10 the appearance policy. Again, while there was at one point
11 challenges to those policies, all of those challenges have been
12 withdrawn. As such, this case is not about whether the
13 hospital may lawfully establish a requirement that only its
14 badge reels may be worn as part of its uniform policy. Those,
15 again, were withdrawn. The only allegations about badge reels
16 themselves deal with whether there was disparate enforcement.

17 Similarly, this is not -- contrary to the counsel for the
18 General Counsel's statements, this is not about whether an
19 employee's general rights to wear Union insignia buttons or
20 stickers. There are no policies at issues related to whether
21 an employee has a general right to wear insignia of any kind.
22 Rather, stated above the only policy at issue is the policy
23 related to what type of identifying information an employee may
24 place on his or her identification badge, in the form of a
25 professional pin or certification.

1 And then the only other question is whether the
2 unchallenged badge reel uniform requirement was disparately
3 enforced.

4 So, I think what's important as we go through these is to
5 understand the basics of some of these terms and really what is
6 taking place at the hospital and in these kinds of cases as
7 Your Honor is aware, context matters. And so you will hear a
8 lot of evidence about badges.

9 Mel Brooks Blazing Saddles famously adapted from the
10 treasurer of the Sierra Madre the now cliché quote of badges,
11 we don't need no stinking badges.

12 But as you're going to hear in these proceedings, at the
13 hospital everyone needs a badge and these badges are taken
14 very, very seriously and for good reason. Before we talk about
15 the hospital though -- or before we talk about the badges, I
16 think we need to talk about the hospital. The hospital is
17 really two very large hospitals combined in one, Long Beach
18 Memorial Medical Center and Miller Children's and Women's
19 Hospital. Combined, they make up the second largest hospital
20 west of the Mississippi.

21 While patient care is always paramount, the hospital is
22 located in an urban environment sprawling multiple city blocks
23 with nearly 6,000 employees and thousands and thousands of more
24 patients, families and visitors at the hospital every day,
25 accordingly, security is a major concern.

1 In fact, the evidence the evidence will show that security
2 including access and identification badges are not only a
3 serious security concern but they're actually patient care
4 issues in mind, we will present evidence on the importance of
5 the nuances of what a badge is and how it's used, but, again,
6 context is important and so vocabulary is important and there
7 are some confusing aspects about the way this case has been
8 presented in the complaint.

9 First, a badge -- when we talk about a badge in these
10 proceedings, we'll hear evidence that a badge is referring to
11 one of two different things, first, a temporary paper badge
12 that's issued to visitors mainly. These paper badges are only
13 issued after the visitor goes through a criminal background
14 check, then the visitor gets a photo identifier on a paper
15 badge that is, specifically, authorizes where that individual
16 gets to go in the hospital. It's not a general access badge,
17 it allows very specific locations to be visited.

18 The other badge, the one we'll spend most of the time
19 talking about, an employee badge. It's a hard plastic
20 electronic badge which contains a large color photo, the name,
21 the employee classification and license information, as well as
22 color coding on the badge to display where that employee is
23 able to go and where they're not able to go. There's also
24 electronic microchip coding in the badge that provides for
25 access.

1 Regardless of the type of badge, regardless of the
2 individual on campus, a badge must always be worn and
3 prominently displayed by every single individual when inside
4 the hospital and employees do have and always have had very
5 specific requirements about the way they need to display their
6 badge.

7 So, when we get beyond the badge we will talk about badge
8 holders. A badge holder is a very -- it's a clear plastic
9 holder -- it's a plastic sleeve issued to every employee, comes
10 with it an emergency card -- codes card and employees are
11 instructed to put their badge inside this clear plastic holder.

12 Then you will hear some conversation about pins, what's a
13 pin? 318 deals with pins and you'll evidence about what a pin
14 means at the hospital and the context of the hospital. These
15 are recognition pins that delineate professional achievement
16 and certification. They tell people what you're able to do and
17 what you have done at the hospital.

18 This isn't a Mickey Mouse pin, this isn't a, I love the
19 Dodgers pin, these are professional certification pins and
20 other professional service related pins. They become part of
21 the badge, part of the identifying documentation that is
22 presented by being pinned through the badge holder.

23 We'll hear about the lanyards. Lanyards are, as we all
24 likely know, are long cords or fabric attached to the badge
25 holder, which could be used to be worn around the neck and as

1 will be discussed, lanyards are not permitted any longer at the
2 hospital. They used to be, but as part of the uniform and
3 appearance policy that was adopted, again, the unchallenged
4 uniform and appearance policy, they're no longer allowed.

5 And then we'll talk about badge reels and as counsel for
6 General Counsel pointed out, badge reels are generally a
7 plastic clip that is attached or a retractable cord that then
8 attaches to the badge holder, so the badge can be clipped to a
9 union and displayed in the fashion required by the uniform
10 policy but also extended for access purposes. Together, all of
11 these things present the employees credentials. And,
12 importantly, there is no such thing as a badge reel holder,
13 there's a badge holder and there's badge reels, but they're
14 separate things and then, of course, there's badges.

15 In terms of the policies as I've already kind of
16 highlighted, there are really three main policies that we're
17 going to be dealing with, policy 318 which is the general dress
18 code and grooming standard, this is the only policy being
19 challenged. The evidence will show that it is a parent
20 corporation form policy, which the hospital adopted. It deals
21 with various dress codes and grooming standards, but, again,
22 the only sentence challenged here deals with pins that are
23 affixed to identification badges?

24 The other two policies that are at issue -- our only issue
25 here is whether they were disparately enforced and both of

1 them, the uniform policy and the appearance policy were
2 implemented in late 2014, they were implemented after
3 discussions with the California Nurses Association and they
4 were adopted for specific patient care related concerns,
5 related to infection control and the ability to easily and
6 quickly identify a patient care provider and their specific
7 specialties.

8 The first of these two policies which will be referred to
9 as the uniform policy PC261.01 and is entitled uniform and
10 infection prevention standards for direct care providers.

11 This policy expands on and where applicable, supersedes
12 318. They both provide a more specific uniform standard for
13 patient care providers whereas the dress code policy is for
14 everybody even those that aren't doing patient care and
15 establishes what is known as a bare below the elbows or BBE
16 standard, requiring that all patient care providers be
17 completely bare below their elbows for infection control
18 purposes. There are no complaint allegations related to this
19 policy, but because it is read in conjunction with the
20 appearance policy it will be important.

21 The appearance policy is 261.02 and is titled appearance
22 grooming and infection prevention standards for direct care
23 providers. Again, only applicable to direct care providers and
24 this policy like the uniform policy expands on and in many
25 areas does supersede 318. Additionally, this policy delineated

1 more specific rules related to implementing the uniform policy,
2 including what is known as number 12 in the appearance policy
3 which reads quote, "identification badges shall be worn by
4 everyone with name and picture facing forward. Badges must be
5 worn at color level, right side, so they can be readily seen.
6 Lanyards are not permitted. Badge reels may only be branded
7 with Memorial Care approval of those."

8 That policy, which has not been challenged is whether is
9 the one that we're going to be dealing with when the General
10 Counsel alleges disparate enforcement.

11 Once the evidence is heard we think Your Honor should have
12 no problem determining that both of the allegations are
13 meritless. The evidence will show that policy 318 cannot
14 reasonably be read to infringe on Section 7 rights.

15 First, there's no mention or reference anywhere in 318
16 regarding employees ability to wear Union insignia or messaging
17 while at work, rather counsel for the General Counsel attempts
18 to conjure one up out of the hospital's right to require as
19 part of employees uniform that employees wear specific, correct
20 identifying information on and as part of their ID badges.
21 Hospital employees including registered nurses wear hospital
22 provided pins, again, these are the Dodgers pins or your
23 Disneyland pins, they're either provided by the hospital or
24 they're provided by a certifying agency or other third party
25 provider that is certifying that a person has a particular

1 qualification to perform a particular type of patient care.

2 The evidence you hear when we talk about these pins will
3 clearly establish that there's an interest that the hospital
4 has in ensuring that people are properly identifying themselves
5 and only displaying the professional qualifications that they
6 have actually earned and that they're similarly within their
7 right to restrict employees from cluttering up their badge or
8 other identifying information or to in any way interfere with
9 what will be shown as a patient care concern, the proper
10 identification of proper patient care providers.

11 So, it will be shown that in the context -- in context,
12 318 to all employees who read it understand that that means you
13 can't say, I have a pin for a certification that you don't
14 actually have. It's a very valid concern of the hospital and
15 certainly not a violation of the Act.

16 And we think the only -- we think it's important to note
17 that there's no allegation related to the enforcement of 318.
18 318, again, deals with these pins, there's not going to be any
19 allegation that anybody was wearing a pin, at least, that we're
20 aware of, and was told that they shouldn't be able to -- that
21 they needed to get rid of a Union pin. Rather the disparate
22 enforcement portions of this case don't deal with 318 at all,
23 they deal with the unchallenged appearance policy and we think
24 that the evidence that will be presented in this hearing will
25 clearly show that the hospital uniformly enforced the badge

1 reel uniform requirement by merely reminding employees who were
2 out of compliance, whether they were out of compliance wearing
3 a CNA badge reel or any other kind of badge reel, that they
4 needed to start to wear and only could wear, the Memorial Care
5 Uniform approved badge reel. Together, we think that all of
6 this evidence will show that there's no violation of the Act.

7 JUDGE WEDEKIND: Thank you. I do really appreciate the
8 opening statements, because they're very helpful to me and
9 especially in making evidentiary rulings as we go through the
10 trial.

11 I have a couple questions. So, tell me the theory -- the
12 GC's theory, General Counsel's theory only, for number 6? The
13 case -- I can't remember the name of the case, but if it's not
14 unlawful on its face, the Board looks at whether it would
15 reasonably be construed by employees to prohibit a protected
16 activity or, I believe, the other test would be whether it's
17 been enforced in a discriminatory manner; is that correct? So,
18 which is the GC theory or both? Is it unlawful on its face?

19 MS. PARKER: Yes. So, we're alleging that the rule is
20 unlawful on its face.

21 JUDGE WEDEKIND: Okay. But I -- for what reason?

22 MS. PARKER: Based on the fact that it's giving -- putting
23 up the Employer's discretion to approve insignia that employees
24 wear on their badges or wear on their uniforms and because it
25 leaves it at the Employer's discretion we feel that this is

1 unlawful on its face and it's infringing on employees statutory
2 rights to wear anything --

3 JUDGE WEDEKIND: Okay. So, you're not alleging that it's
4 been discriminatorily enforced?

5 MS. PARKER: Policy 318, no.

6 JUDGE WEDEKIND: No. Okay. So, that helps. Okay. So,
7 the counsel for the company talked a lot about the uniform
8 policy and the appearance policy and he's saying that 7(a) and
9 (b) are alleging that the company disparately enforced either
10 or both uniform policy and appearance policy. Is that what
11 you're alleging?

12 MS. PARKER: Yes, Your Honor. At the time that the
13 evidence was presented to us and we were unaware of the
14 specifics of the policies, there are hundreds and hundreds of
15 policies enforced at the hospital and through their interim net
16 site and the evidence that was presented to us, it's difficult
17 for employees, according to what we've been told, to understand
18 the vast array of policies. So, because we didn't know
19 specifically which policy the supervisors were referring to
20 when they disparately enforced, when they asked the employees
21 to remove their Union badge holders, we alleged it more
22 generally. But I would agree with Mr. Abrahms that those
23 policies that we cited to you, which I am now become aware of
24 are relevant here.

25 JUDGE WEDEKIND: Okay. So, number 12 of the appearance

1 policy says only -- it permits logos but only hospital logo --
2 only a hospital logo on the badge reels?

3 MS. PARKER: Correct.

4 JUDGE WEDEKIND: Is the General Counsel alleging that
5 that's unlawful?

6 MS. PARKER: I mean, we haven't alleged it specifically
7 in the complaint, but yes, we would say that that is unlawful
8 and goes in theory with what was alleged in the complaint.

9 JUDGE WEDEKIND: And the reason it wasn't in the complaint
10 before?

11 MS. PARKER: We were unaware of that specific policy.

12 JUDGE WEDEKIND: You weren't aware of it. Okay.

13 MR. ABRAHMS: Your Honor, there's -- everything that I
14 just said to you was presented to the General Counsel last
15 year.

16 MS. PARKER: I wasn't, specifically, given a copy of this
17 policy.

18 MR. ABRAHMS: In verbatim, everything that I just said was
19 quoted to the counsel for the General Counsel.

20 JUDGE WEDEKIND: During the investigation?

21 MR. ABRAHMS: There were multiple amendments followed by a
22 withdrawal. And it was made very clear that during the
23 investigation that 318 was never enforced and that what people
24 were complaining about, once it became clear that the Union was
25 alleging that issues related to the badge reels, but they were

1 talking about this uniform policy and the appearance policy,
2 which had been negotiated with the Union and therefore there
3 was also an 8(a)5 that was subsequently withdrawn as well as
4 all issues related to the badge reels other than the disparate
5 treatment claim.

6 MR. BERUL: Your Honor, if I may just state something from
7 Charging Party here, please?

8 JUDGE WEDEKIND: Sure.

9 MR. BERUL: I'm sure as you'll hear in the testimony it is
10 unclear what policies were being relied upon with the
11 disparaging enforcement and it's my understanding -- the Union
12 was not aware of this until seeing this right now policy, 261.
13 02, badge reels may only be branded with Memorial Care approved
14 logos or text.

15 Given the relation to the other allegations in the
16 complaint, I would urge Your Honor to consider the facial
17 illegality of that policy in and of itself, whether it's
18 spelled out in the complaint or not. As evidence will come in,
19 the badge reels have been decorated with a variety of ways that
20 the hospital has allowed except if it has union insignia and I
21 also just wanted to clarify something in paragraph 6 of the
22 complaint when Ms. Parker was speaking, she was talking about
23 wearing insignia -- she was talking about badge reels and I
24 think that -- correct me if I'm wrong, but the paragraph is
25 just facially unlawful given how the reasonable employee would

1 read this. Only MHS approved pins, badges and professional
2 certification may be worn and that is something that the
3 employees did come across, including -- and clearly there's
4 plenty of case law on requiring approval from the Employer to
5 the -- interfere with --

6 JUDGE WEDEKIND: And that sounds like that's the case law
7 the General Counsel is relying on. All right. Go ahead.

8 MR. BERUL: Yes. Yeah. And I wanted to make a specific
9 point in general that I would urge to consider the facial
10 illegality of paragraph 12 of policy 261.02.

11 JUDGE WEDEKIND: Okay. Let me just say -- okay, I agree
12 with you. I'm not going to consider it unless the general
13 counsel asks me to. And here's the deal it doesn't sound like
14 I'm going to -- we're not going to avoid the dressing paragraph
15 12, I think the company is relying on it and it will come up.
16 But the issue I think comes up in the remedy, okay. If you
17 want me to issue this typical order saying rescind and revise
18 and send out, you know, mail copies to everybody --

19 MS. PARKER: Right.

20 JUDGE WEDEKIND: -- that you rescind and revise number 12,
21 then I think you have to amend the complaint.

22 MS. PARKER: Right.

23 JUDGE WEDEKIND: Otherwise, I'm sure I can say cease and
24 desist from requiring employees to have the company logo only,
25 but I can't --

1 MS. PARKER: Right. And that I am happy to address, but I
2 will have to speak to the regional attorney, briefly, just
3 because that's at his discretion.

4 JUDGE WEDEKIND: Right.

5 MS. PARKER: So, if I can --

6 JUDGE WEDEKIND: And then you can make your argument --

7 MS. PARKER: -- five minutes?

8 JUDGE WEDEKIND: But -- okay. Is there anything else
9 though before we -- you're all set to go with your first
10 witness?

11 MS. PARKER: Yes. I'd actually like to call their
12 custodian of records to go through the documents that have been
13 provided.

14 JUDGE WEDEKIND: Okay. Go talk to the Region real quick
15 and --

16 MS. PARKER: Okay.

17 JUDGE WEDEKIND: -- then we'll come back. Let's go off
18 the record. Five minutes.

19 (Off the record at 2:00 p.m.)

20 JUDGE WEDEKIND: General Counsel?

21 MS. PARKER: Okay. So, with respect to the question of
22 amending the complaint, the Region would like to -- General
23 Counsel would like to first put on the custodian of the records
24 just to understand a little bit more about this policy and then
25 we'll decide from there.

1 JUDGE WEDEKIND: Okay. All right. Ready to go?

2 MR. ABRAHMS: You're calling her only for the sole purpose
3 of asking if these records are the records?

4 MS. PARKER: Yeah. I wanted to -- you know, we could
5 probably resolve it by stipulations as well, but as far as
6 these policies that have been provided, I wanted to understand
7 which -- you know, when they became in effect, if they're
8 currently in effect, who they're applicable to, those kinds of
9 things.

10 MR. ABRAHMS: Well, I think that's beyond whether or not
11 the documents are what they -- are responsive.

12 MS. PARKER: They're pretty general questions about the
13 policies in effect.

14 JUDGE WEDEKIND: What's your title again?

15 MS. ROCHA: Director of human resources.

16 MR. ABRAHMS: I guess, I just want to know if she -- she
17 said she wanted to call her as the custodian of record. To
18 me --

19 JUDGE WEDEKIND: Yes. Is that the only reason you're
20 calling her, because she's the custodian of records?

21 MS. PARKER: Yes. As the custodian of the records.

22 MR. ABRAHMS: Okay. I --

23 JUDGE WEDEKIND: Let's proceed with the first witness.
24 Can you take the stand for us? Thank you.

25 JUDGE WEDEKIND: Take a seat. Can you raise your right

1 hand for me?

2 Whereupon,

3

CINTHYA ROCHA

4 having been duly sworn, was called as a witness herein and was
5 examined and testified as follows:

6 JUDGE WEDEKIND: Thank you very much. Please state your
7 full name and spell it for us.

8 THE WITNESS: Cinthya Rocha. C-I-N-T-H-Y-A, last name R-
9 O-C-H-A.

10 JUDGE WEDEKIND: Thank you.

11

DIRECT EXAMINATION

12 Q BY MS. PARKER: Good afternoon, Ms. Rocha.

13 A Good afternoon.

14 Q Okay. I just have a few policies that I wanted to show
15 you and then just see if you could give me a little bit of
16 information about them.

17 A Okay.

18 Q Just give me one second to locate those. Actually, I'm
19 going to give you two right off the bat. I am providing the
20 witness two policies that are identified as dress code and
21 grooming standards policy procedure 318, one has an effective
22 date of March 3rd, 2014, it's Bate Stamped 1 through 3,
23 provided that pursuant to Respondent's production.

24 The second one has an effective date of July 7th, 2014,
25 Bate Stamped 4 through 6. Okay. So, let's start with the

1 first one --

2 MR. ABRAHMS: Aren't you going to provide copies to the
3 rest of us?

4 MS. PARKER: Yes. She's doing it -- she's working on it,
5 sorry.

6 Q BY MS. PARKER: So, let's start with the first policy -- I
7 marked this --

8 MR. ABRAHMS: Can we wait until we have copies before you
9 start asking questions?

10 MS. PARKER: Sure.

11 MR. ABRAHMS: Thank you.

12 MS. PARKER: Does everybody have a copy?

13 JUDGE WEDEKIND: So, you're referring to GC Exhibit 3 at
14 this point?

15 MS. PARKER: Correct.

16 JUDGE WEDEKIND: Okay.

17 Q BY MS. PARKER: All right. With respect to the document
18 marked as GC-3, would you tell me what is this document?

19 A Yes. This is a MHS dress code and grooming standards
20 policy. Policy number 318.

21 Q And has this policy been adopted at Long Beach Memorial
22 Hospital?

23 A Yes, it has.

24 Q Is this specific policy with the March 3rd date still in
25 effect?

1 A No. There's a new one.

2 Q Okay. And so in reference to -- let's move on to GC-4, is
3 this the policy that's currently in effect at the hospital --
4 the version of pulse. I'm sorry. Let's let everybody get a
5 copy first.

6 A Yes, I believe so.

7 Q Okay. And can you tell me who this policy is applicable
8 to at Long Beach Memorial?

9 A All employees.

10 Q So GC-3 is no longer in effect, but -- correct? Or is
11 it --

12 A If there is a change, there is a policy revision, so yes,
13 this takes over this.

14 Q GC-4 supersedes --

15 A Correct.

16 Q -- GC-3. Okay. And with respect to GC-4, when did it go
17 into effect?

18 A GC-4. This is GC-2.

19 MS. KAGEL: I'm sorry. I mislabeled them.

20 THE WITNESS: Okay.

21 Q BY MS. PARKER: Okay. So sorry.

22 A Uh-huh.

23 Q GC-4. When did GC-4 go into effect?

24 A July 7th, 2014.

25 Q And it's currently still in effect?

1 A Yes.

2 Q And where is GC-4 maintained?

3 A In our intranet site under human resources.

4 MS. PARKER: If I may have just one minute. Let the
5 record reflect I'm showing the witness a document that's been
6 marked GC Exhibit 5 Bates Stamped 10 through 13. And it's
7 PC261.01 at the very top.

8 THE WITNESS: Okay.

9 Q BY MS. PARKER: Okay. And could you identify that
10 document that I just marked as GC-5?

11 A Yes. This is a hospital policy. It says, "Uniform and
12 infection prevention standards for direct care providers."

13 Q And who is this policy applicable to?

14 A All direct care providers.

15 Q And when did this policy go into effect?

16 A October, 2014.

17 Q Where is this policy maintained?

18 A This is maintained in our intranet site.

19 Q Okay.

20 MS. PARKER: Let the record reflect I'm showing the
21 witness a document that's been marked as General Counsel's
22 Exhibit 6, Bates Stamp numbered 14 through 16 of the
23 Respondent's subpoena production. The top of it is identified
24 PT26102.

25 Q BY MS. PARKER: If you could take a look at that document

1 and tell me what that document is.

2 A This is a hospital policy also for appearance, grooming
3 and infection prevention standards for direct care providers.

4 Q And who is this policy applicable to?

5 A All direct care providers.

6 Q And when did this policy go into effect?

7 A October, 2014.

8 Q And it's still currently in effect?

9 A Yes.

10 Q And where is this policy maintained?

11 A On our intranet site.

12 MS. PARKER: Just give me a couple of minutes, Your Honor,
13 just to consult with my colleague here.

14 JUDGE WEDEKIND: Off the record.

15 (Off the record at 2:30 p.m.)

16 MS. PARKER: All right. So General Counsel would like to
17 offer into evidence General Counsel's Exhibits 3 through 6.

18 JUDGE WEDEKIND: Any objection?

19 MR. ABRAHMS: No objection.

20 MR. BERUL: No objection.

21 JUDGE WEDEKIND: They're received.

22 **(General Counsel Exhibit Number 3 through 6 Received into**
23 **Evidence)**

24 MS. PARKER: Okay. And as far as the amendment to the
25 complaint, I can consult with the regional attorney very

1 quickly or we can hold off on it and I can --

2 JUDGE WEDEKIND: Are you done with the witness?

3 MS. PARKER: Yes. I'm sorry.

4 JUDGE WEDEKIND: Okay.

5 MS. PARKER: And you may be excused.

6 THE WITNESS: Okay.

7 JUDGE WEDEKIND: Any other questions for the witness?

8 MR. BERUL: No follow up for the witness.

9 MR. ABRAHMS: Not at this time.

10 JUDGE WEDEKIND: Okay. Thank you. You can step down.

11 It's up to you. What would you like to do?

12 MS. PARKER: Can we just take a couple minutes, just so we
13 can --

14 JUDGE WEDEKIND: Okay.

15 MS. PARKER: -- move on from that.

16 JUDGE WEDEKIND: All right. Off the record.

17 (Off the record at 2:34 p.m.)

18 JUDGE WEDEKIND: General Counsel?

19 MS. PARKER: Okay. And so after further consultation, the
20 Region would like to make a motion to amend the complaint to
21 include that portion of Policy 261.02 that's come to our
22 attention. So what we would propose is as to the current
23 paragraph 6 of the complaint, we make the portion that's
24 already there, 6A. And then we would add a 6B.

25 And we -- which would read -- and so we would insert

1 paragraph 6B, which would read, "Since at least July 1st, 2015,
2 Respondent has maintained the following rule, which is
3 contained in Respondent's PC261.02. Badge reels may only be
4 branded with Memorial Care approved logos or test."

5 JUDGE WEDEKIND: Any objection?

6 MR. ABRAHMS: We very much object to this, Your Honor.
7 This is -- this exact allegation has been withdrawn. The --

8 MR. BERUL: That is not true.

9 MR. ABRAHMS: Well --

10 JUDGE WEDEKIND: Well, let's let him finish and then you
11 can come back.

12 MR. ABRAHMS: So Your Honor, the history of this -- the
13 charge was filed on July 30th of 2015. It was amended on
14 September 16th of 2015. On October 2nd of 2015, counsel for
15 the General -- or -- Region 21 received a statement of
16 position, which included this exact policy. Everything that
17 she just said was provided to them. In response to that
18 position statement, presumably -- and actually, there was other
19 correspondence going back and forth with the Region on this
20 issue of what policy are they attacking, because that -- it was
21 very vague.

22 And we were trying to make it very clear what policy was
23 being attacked. And we let them know that the pins policy of
24 318 have nothing to do with the badge reels. And that was
25 really the entire gist of the position statement that was

1 provided to the Region. After that, the union amended the
2 charge again on October 21st, so some three weeks later,
3 presumably in response to the statement of position, further
4 investigation took place.

5 And on November 30th, the Region sent a letter saying,
6 "Pursuant to the Charging Party's oral withdraw request on
7 November 25, 2015, the portions of the charge alleging that
8 that the Employer violated Section 8(a)1 by promulgating an
9 overly broad dress code policy and 8(a)1 and 5 by unilaterally
10 implementing a dress code policy without bargaining in good
11 faith, despite the fact that that dress code policy change was
12 a mid-term modification of the party's collective bargaining
13 agreement had been withdrawn."

14 MR. BERUL: Your Honor, if I may, because --

15 JUDGE WEDEKIND: Well, no. Let him finish.

16 MR. ABRAHMS: So --

17 JUDGE WEDEKIND: Let him finish.

18 MR. ABRAHMS: -- Your Honor, this is by definition, you
19 know -- while we understand the Counsel for General Counsel has
20 broad discretion and Your Honor has broad discretion in
21 amending the complaint, we are almost a year into this case,
22 where this has been the issue. And we have overtly made it the
23 issue. There -- we've never hid it. In fact -- and if the
24 union is to claim that they're not aware of it, part of that
25 position statement was a union flyer on November 21st, 2014.

1 So a full year before their withdraw (sic) that sites to
2 the uniform policy and the union's position on the union (sic)
3 policy, including badge reels. So this isn't as if Charging --
4 the Counsel for the General Counsel or the Charging Party today
5 found out about this rule. This rule was provided -- or this
6 poli -- these policies in draft form were provided to the union
7 in fall of 2014.

8 There was negotiations over them. There was a charge,
9 other than this charge filed, which we think -- we probably
10 want to put in the record at this point, that was filed in late
11 2014, withdrawn in 2015, refiled with respect to disparate
12 treatment six months later in the form of the charge before you
13 and attacking a different policy, litigated for three months,
14 where we talked about this policy.

15 And now today, Counsel for the General Counsel wants to
16 bring in the policy -- the uniform policy and the appearance
17 policy, even though they've known about it for -- since before
18 the amended charge. Not just before the complaint. Before the
19 charge was amended. So there's just no basis for this
20 literally reversal of the history of the parties -- the history
21 of this charge.

22 We would oppose any amendment that would now be a -- bring
23 a facial attack to the charge that has from the Respondent's
24 perspective, been investigated and the charges withdrawn, or at
25 least certainly weren't included in the complaint.

1 MR. BERUL: Your Honor, if I may respond, because there's
2 been a lot of assertions about filing of charges and why the
3 union did this or the union did that that certainly Mr. Abrahms
4 is speculating. And I'll give him respect to say, you know,
5 incorrectly speculating as opposed to mischaracterizing.

6 We did allege 8(a)5 concerning some negotiation sessions
7 to do primarily with the wearing of rings under the sleeves
8 free policy and also to do with -- once we became aware of what
9 we thought was policy 318 that was being implemented before the
10 completion of bargaining during the mid-term of the contract,
11 the Region, you know, with due respect -- I disagree -- they
12 found there was no 8(a)5 violation, so we withdrew without
13 prejudice.

14 And as far as the promulgation allegation, they said they
15 were just going on the theory of maintenance, rather than
16 promulgation, so we withdrew that without prejudice. The
17 current complaint covers just 8(a)1. This is the first time
18 I've ever laid eyes on this language myself. And I will --
19 would also just say in addition to -- and I'm happy that the
20 General Counsel wishes to amend the complaint. But this is an
21 8(a)1. There's no 10B problem. It's continuing in effect.

22 And I would just draw Your Honor's attention to Pergament
23 United Sales 296 NLRB 333 page 334, 1989 enforced at 920 F2d
24 130 Second Circuit 1990. Even if a complaint is somehow not
25 construed to include the specific issue, if the unpled matter

1 can support an unfair labor practice finding where it's closely
2 connected to the complaint's subject matter as is clearly the
3 case here, and has been fully litigated, which Mr. Abrahms will
4 have the chance to do, Your Honor is free to find a violation,
5 even if the complaint is not amended.

6 So it -- aside from the incorrect assertions about the
7 history of the charge, this clearly is necessary. It's -- this
8 is an 8(a)1 that we were not aware of. And we do not want to
9 be left with a right without a remedy. You know, if they're
10 somehow to be found to be disparately enforcing. We don't want
11 to have at the end of the day that they still can't wear their
12 CNA badge reel holder, when they've allowed all kinds of other
13 stuff.

14 And on its face, you know, absent showing that there's
15 special circumstances, which is their burden to do, this is
16 going to be facially unlawful. And these are the reasons why
17 it has not complainants into play until this very moment.

18 JUDGE WEDEKIND: Any other response from the General
19 Counsel?

20 MS. PARKER: Yes. In response to Mr. Abrahms' comment
21 that the promulgation portion of the policy had been withdrawn,
22 that's correct, but that was referring to Policy 318. You
23 know, again, Respondent did not ever provide until today
24 responsive to the subpoena Policy 261.02. They reference some
25 general -- and we can put their position statement into the

1 record.

2 They reference some general uniform policies and things
3 like that, but I -- although the Region asked for policies, you
4 know, relevant to these issues in the charge, it was never
5 provided until now. So it was not known that there was a
6 specific rule prohibiting badge reel holders without the
7 Memorial Care logo.

8 MR. ABRAHMS: Your Honor, I think we -- I -- put our
9 position statement in the record. What she just said is
10 demonstrably false. It is actually quoted in the position
11 statement. The portions of -- I'm reading from it. The
12 portion of the implemented version of the patient care
13 infection control uniform standards that addresses badges and
14 badge reels states the following. And then it quotes the
15 policy she's now trying to put in there. She had it on October
16 2nd.

17 And then we followed by saying nothing in the patient
18 control infection control uniform standards, which we defined
19 for them, is -- addresses pins, because that was part of the
20 issue. We were trying to clarify with the Region. What is
21 Charging Party complaining about? If they're complaining about
22 pins, that's a totally different thing than badge reels. And
23 we -- and what came out of that, after our very detailed
24 statement of position was we're going after the pins in 318.

25 JUDGE WEDEKIND: I hear you. You apparently have refuted

1 the General Counsel's statement. On the other hand, I think
2 the union's argument is well taken. You know, the fact is
3 you're going to be relying on this policy, it sounds like to
4 me. You want to put it into evidence. It's so closely
5 related. And it's the first day of trial. We haven't even had
6 our first witness on, other than the custodian of records.

7 As you acknowledge, the Board has a very liberal view when
8 it comes to amendments. I can't imagine that the Board would
9 uphold me if I refused to let the General Counsel amend the
10 complaint. And I don't like to get reversed. So I'm going to
11 allow the amendment over your objection.

12 MR. ABRAHMS: Okay.

13 JUDGE WEDEKIND: You ready to go with the next witness?

14 MS. PARKER: Yes.

15 JUDGE WEDEKIND: Have a seat. Hope you didn't have to
16 wait too long.

17 MS. WELCH: No. It's fine. Thank you.

18 JUDGE WEDEKIND: Okay. Can you raise your right hand for
19 me?

20 Whereupon,

21 **BRANDY WELCH**

22 having been duly sworn, was called as a witness herein and was
23 examined and testified as follows:

24 JUDGE WEDEKIND: Thank you very much. Please state your
25 name for us and spell us.

1 THE WITNESS: Brandy Welch. B-R-A-N-D-Y W-E-L-C-H.

2 JUDGE WEDEKIND: All right. Thank you very much.

3 THE WITNESS: Thank you.

4 **DIRECT EXAMINATION**

5 Q BY MS. PARKER: Good afternoon, Ms. Welch. Could you tell
6 me where you are employed?

7 A Long Beach memorial Medical Center.

8 Q And how long have you worked for Long Beach?

9 A Eighteen years.

10 Q And what is your current job title with Long Beach?

11 A Registered nurses.

12 Q And could you tell me which department it is that you work
13 in at the hospital?

14 A General pediatrics.

15 Q And just generally for a little background, could you
16 describe what your job duties are as a registered nurse in the
17 pediatric department?

18 A Direct patient care.

19 Q Are you represented by a union?

20 A I am.

21 Q And which union is that?

22 A California Nurses Association.

23 Q Do you currently hold any positions with the union?

24 A I do.

25 Q And which positions do you hold with the union?

1 A I'm a union rep. And I sit on the Professional Practice
2 Counsel. And I also am a union negotiator for the contract.

3 Q How long have you been a union rep?

4 A Fifteen years now.

5 Q Okay. How about the bargaining committee? How long have
6 you sat on the bargaining committee?

7 A I've done four out of five contracts, so about just as
8 long.

9 Q So let's talk for a couple minutes about the hospital's
10 current uniform requirements. Does the hospital require that
11 the registered nurses in your department wear a specific
12 uniform?

13 A Yes they do.

14 Q And could you describe what that uniform is?

15 A Navy blue scrub top with navy blue scrub bottoms.

16 Q Is there anything indicated on the navy blue scrubs that
17 you just described?

18 A Yes. On the left side it says RN. And underneath, it
19 says Long Beach Memorial or Memorial Care. Excuse me.

20 Q Are you required to wear an identification badge as part
21 of your uniform?

22 A Yes.

23 Q What is the purpose of that identification badge, as you
24 understand it?

25 A It identifies who we are and what position we hold.

1 Q And other than identifying you, is it used for anything
2 else?

3 A It allows us to get in and out of the department by
4 swiping our badge to get out of the doors that are controlled.

5 Q Are there any current uniform requirements in effect
6 regarding how employees are to affix their identification badge
7 to their uniform?

8 A We can either directly affix it to the extra piece of
9 material that's there with a clip or with a badge reel.

10 Q I'm going to show you a photograph. It's been marked as
11 General Counsel's Exhibit 7. Let me get copies to everyone
12 else. Okay. Could you describe this photograph, Ms. Welch?

13 A That's me wearing my uniform with my identification badge.

14 Q All right. Now, has the uniform requirement that is
15 currently in effect as -- at the hospital, as you just describe
16 it, always been the uniform in effect at the hospital?

17 A No.

18 Q Was there a change to the uniform requirement at some
19 point?

20 A Yes.

21 Q And when did this change to the uniform requirement occur?

22 A Approximately around December, 2014.

23 Q And could you describe what the uniform requirements were
24 prior to December, 2014?

25 A We could wear any color of scrub top and bottom with any

1 pattern.

2 Q And were employees required to wear identification badges
3 prior to December, 2014?

4 A Yes.

5 Q Were there any requirements as to how the identification
6 badge was to be affixed to your uniform?

7 A No.

8 Q How did you affix your identification badge to your
9 uniform prior to December, 2014?

10 A I wore a lanyard, which is a necklace that goes over and
11 holds your badge.

12 Q And what type of lanyard would you wear?

13 A I had various different ones promoting TV shows or
14 characters.

15 Q Did you ever wear a badge reel as well?

16 A No.

17 JUDGE WEDEKIND: I'm not sure I understand. How did it
18 promote anything? It's just a necklace. What was --

19 THE WITNESS: It was material --

20 JUDGE WEDEKIND: Uh-huh.

21 THE WITNESS: -- so it hand like I did Catching Fire. I
22 did Sons of Anarchy. Sponge Bob.

23 JUDGE WEDEKIND: So it actually in write -- it had the
24 name Sponge Bob on it, on the lanyard?

25 THE WITNESS: It had the character.

1 JUDGE WEDEKIND: The character on the lanyard.

2 THE WITNESS: Yeah.

3 JUDGE WEDEKIND: Okay.

4 Q BY MS. PARKER: And why was it that you liked to wear
5 lanyards with different type of characters?

6 A It helped me connect to my patients.

7 Q Your patients are children, correct?

8 A Yes.

9 Q Now, prior to December, 2014 when the uniform requirement
10 changed, how long were the prior uniform requirements in
11 effect?

12 A Fifteen, 16 years.

13 Q I'd like to show you another photograph. It's been marked
14 as General Counsel's Exhibit 8. And could you describe what's
15 in that photograph, General Counsel's Exhibit 8?

16 A That's the Memorial Care badge reel.

17 Q I'd like to also like to -- could you describe for the
18 record the approximate size of that badge reel? I know it
19 looks a little large in that photograph.

20 A Approximately about an inch round.

21 JUDGE WEDEKIND: Diameter? Top --

22 THE WITNESS: Yes.

23 JUDGE WEDEKIND: -- side to side?

24 THE WITNESS: Yes.

25 Q BY MS. PARKER: And can you identify what's in General

1 Counsel's Exhibit 9?

2 MR. ABRAHMS: One moment. I think you gave me the wrong
3 thing. Or did you?

4 MS. PARKER: No. Oh, good.

5 MR. ABRAHMS: I'm sorry.

6 THE WITNESS: It's a pin with a Memorial Care badge reel
7 holder.

8 Q BY MS. PARKER: Okay. And is that a regular size pin, I
9 assume?

10 A Yes, it is.

11 Q Okay. And when was -- let's move back to General
12 Counsel's Exhibit 8 for a second. Were you ever given one of
13 these badge reels?

14 A Yes.

15 Q And when was that given to you?

16 A Recalling maybe around January of 2015.

17 Q Okay. And who gave it to you or how did you obtain it?

18 A I believe one of my assistant unit managers handed them
19 out.

20 Q Okay. I'm going to show you another document that's been
21 marked as General Counsel's Exhibit 10. Okay. And do you --
22 can you tell me what that -- what the image is in that
23 document?

24 A That's the union logo of the badge reel holder.

25 Q Okay. Do you have a badge reel holder that looks like

1 this?

2 A Yes.

3 Q And how did you get that badge reel holder?

4 A From my labor representative.

5 Q Okay. Just to kind of assist the Judge and see how this
6 works, I'm going to give you an actual physical CNA badge reel
7 holder that looks similar to the one in the image. Could you
8 just look at that? And describe for the record to the best
9 that you can how it works for the Judge to understand --

10 A The back part --

11 Q -- how it works.

12 A -- attaches to a free piece of material that we have on
13 our uniform. Our badges attach here. And then we can use them
14 to access the various points of entry for the hospital.

15 JUDGE WEDEKIND: And can you describe for us what you just
16 did?

17 THE WITNESS: Oh. The -- it's a pulley?

18 JUDGE WEDEKIND: The pulley pulls out.

19 THE WITNESS: It's a pulley.

20 MS. PARKER: So for the sake of clarity on the record, let
21 the record reflect that the witness held up a red CNA badge
22 holder similar to the one in General Counsel's Exhibit 10 and
23 pulled out kind of a string pulley that extended from the badge
24 reel and explained how it -- the back side of the badge reel
25 clips to the uniform.

1 Q BY MS. PARKER: Okay. So I'm going to show you another
2 photograph that's been marked as General Counsel's Exhibit 11.

3 JUDGE WEDEKIND: I haven't gotten a copy of 8, 9 or 10.

4 MS. PARKER: Okay.

5 JUDGE WEDEKIND: Can you give me that and 11?

6 MS. PARKER: Sorry.

7 JUDGE WEDEKIND: Thanks.

8 MS. PARKER: Okay. I've just given the witness a copy of
9 General Counsel's Exhibit 11.

10 Q BY MS. PARKER: And could you describe what's in that
11 image?

12 A It's both the CNA badge reel holder and the Memorial badge
13 reel holder side by side.

14 Q Okay. And is this image representative of the size of
15 both the CNA badge reel holder and the Long Beach badge holder?

16 A Yes.

17 Q Okay. Does the CNA badge holder clip onto the uniform in
18 the same way as the Long Beach Memorial badge holder?

19 A Yes.

20 Q Does the string pulley from the CNA badge holder work the
21 same way as the Long Beach badge holder?

22 A Yes.

23 Q Okay. And does the CNA badge holder clip onto the
24 identification badge in the same manner as the Long Beach badge
25 holder?

1 A Yes.

2 Q In reference to General Counsel's Exhibit 10, have you
3 ever worn a badge holder that looks like this at the -- while
4 working at the hospital?

5 A Yes.

6 Q Did you ever wear it after the new uniform requirements
7 took effect after December, 2014?

8 A Yes.

9 Q And for what time period did you wear that CNA badge
10 holder as represented in General Counsel's Exhibit 10?

11 A Approximately February of 2015 through July 9th of 2015.

12 Q And was there a reason that you wore this CNA badge reel
13 holder instead of the hospital issued badge holder?

14 A Yes. Shortly after I received my Memorial badge reel
15 holder, it broke. The face came off. So I changed.

16 Q Were you ever asked by a manager or supervisor at the
17 hospital to remove the CNA badge holder?

18 A Yes.

19 Q Who was it that asked you to remove your CNA badge holder?

20 A My director, Colleen Coonan.

21 Q When did this happen?

22 A July 9th, 2015.

23 Q Okay. And could -- where did it happen?

24 A It was outside the manager's office right outside the
25 general pediatric unit door.

1 Q And could you describe what happened that day?

2 A I had been downstairs in human resources for grievance
3 procedure when walking back up, I noticed that both the
4 director and my manager, Cheri Sochin were in the manager's
5 office. So I asked to speak with them about a secondary
6 grievance that I was trying to solve. And as I was leaving
7 that conversation, my director, Colleen Coonan told me, "I need
8 -- you need to remove that."

9 And I said, "What?"

10 And she says, "That badge reel holder."

11 And I said, "Okay." And I did.

12 Q And have you worn your CNA badge holder since that
13 incident?

14 A No.

15 Q During that few month time period that you describe that
16 you were wearing your CNA badge holder after the new uniform
17 requirements came into effect, did any of your patients
18 complain about the CNA badge holder that you wore?

19 A No.

20 Q Did any of the parents complain --

21 A No.

22 Q -- about the badge holder that you wore? Okay. Now,
23 since July, 2015, after you were asked to remove your CNA badge
24 holder, have you seen any other registered nurses at the
25 hospital wearing other types of badge holders, other than the

1 Long Beach issued badge holders?

2 A Yes.

3 Q Could you describe the types of badge holders that you've
4 seen nurses wear?

5 A There's been various different ones. Cartoon characters,
6 Ariel the Mermaid, One Legacy, which is our procurement program
7 at the hospital. I've seen breast cancer. I've seen just
8 decorated like jewelry type ones.

9 Q And what do you mean by decorated type jewelry?

10 A Looks like a big jeweled -- jewel in the middle with a lot
11 of crystals around it.

12 Q Okay. And does it have the Memorial logo with the jewels
13 on it?

14 A No.

15 Q And you said -- you referenced One Legacy as a procurement
16 program. What do you mean by that?

17 A It's for organ donation after a patient passes. It's a
18 program that we would call and notify when a patient is about
19 to expire.

20 Q Okay. And does the hospital issue those One Legacy organ
21 donation badge holders?

22 A They came out during our healthcare fair.

23 Q Okay. And have you seen any other employees wearing any
24 other types?

25 A Yes. Various colors with various different names and/or

1 cartoon characters, that type of thing.

2 Q Which -- if you could list specifically cartoon
3 characters --

4 A Oh.

5 Q -- you've seen.

6 A I've seen Spiderman. Seen Sponge Bob, Little Mermaid, a
7 Mickey Mouse, Batman, the logo of Batman.

8 Q And where have you seen -- where at the hospital have you
9 seen employees wearing these types of badge reel holders?

10 A All over. In the elevator, when we -- when I was working
11 the skills lab, CORPORATION and on the floor.

12 Q And are you aware of other registered nurses being asked
13 to remove the badge holders that you've just described by any
14 supervisors or managers of the hospital?

15 A No, not from my point of view. Not in my department.

16 Q Not in your department?

17 A Not in my department.

18 MS. PARKER: Just as a housekeeping matter, I move for
19 admission of General Counsel's, looks like 7 through 11 at this
20 point.

21 JUDGE WEDEKIND: Any objection?

22 MR. ABRAHMS: No objection.

23 MR. BERUL: No objection.

24 JUDGE WEDEKIND: They're received.

25 **(General Counsel Exhibit Number 7 through 11 Received into**

1 **Evidence)**

2 Q BY MS. PARKER: I'd like to show you a document that's
3 been marked as General Counsel's Exhibit 12. Could you
4 describe the image in that photograph?

5 A It's a colleague of mine wearing her identification badge
6 with an Ariel badge reel holder.

7 Q Did you take that photograph?

8 A I did.

9 Q When did you take that photograph?

10 A July 9th, 2015.

11 Q Why did you take that photograph?

12 A I was asked to remove my badge, but my colleague was not.
13 And she was wearing a non-Memorial badge reel holder.

14 JUDGE WEDEKIND: Can you tell us what that emblem is?

15 THE WITNESS: That's Ariel the Mermaid --

16 JUDGE WEDEKIND: Okay.

17 THE WITNESS: -- from Disney.

18 MS. PARKER: I'd like to show the witness another
19 photograph that's been marked as General Counsel's Exhibit 13.

20 Q BY MS. PARKER: I'd like to show the witness a photograph
21 that's been marked as General Counsel's Exhibit 13.

22 Q BY MS. PARKER: And could you describe the image in that
23 photograph?

24 A Another one of my colleagues wearing her identification
25 badge with a One Legacy badge reel holder.

1 Q Okay. And did you take that photograph?

2 A Yes, I did.

3 Q And when did you take that photograph?

4 A July 9th, 2015.

5 Q And why did you take that photograph?

6 A We were working side by side on the hallway and she was
7 not asked to remove her badge reel holder.

8 Q How many nurses work in your department?

9 A Approximately 80.

10 Q And how many managers work in your department?

11 A We have six assistant unit managers. Two are shared with
12 the west side, which is a sister unit. One manager and one
13 director.

14 Q Do the registered nurses in your department interact with
15 managers or supervisors on a regular basis?

16 A Yes, we do.

17 Q And how so?

18 A We have huddles in the morning for patient care assurance
19 and then we have huddles in the afternoon for patient
20 experience. And a second -- a third huddle for length of stay.

21 Q Would you describe what a huddle is for the record?

22 A Huddle is when we come together in the middle of the
23 hallway and talk about the patients in the morning. And in the
24 afternoon, we talk about the patient care experience in the
25 middle of the hallway. And a third one is in a room when we

1 are with management and doctors trying to assist with the
2 length of stay.

3 Q Okay. And I guess so there's three different types of
4 huddles, it sounds like. With that first one you described
5 that occurs in the morning, how many registered nurses are in
6 those huddles?

7 A Four to five, depending on the hallway.

8 Q And who is conducting the huddle?

9 A The clinical nurse specialist.

10 Q Okay. What does the clinical nurse specialist do?

11 A She just directs the meeting, the huddle.

12 Q Okay. And what about this second huddle that you
13 described?

14 A That's usually your assistant unit manager.

15 Q And how many nurses attend that huddle?

16 A Usually -- it depends on the hallway. Four to five.

17 Q Four to five. Okay. And then how about that third huddle
18 that you described?

19 A It's usually one nurse with the team in a room.

20 Q And what do you mean by team?

21 A It's usually the doctors, the clinical nurse specialist,
22 the case manager, usually the manager, sometimes the director.

23 Q And other than these huddles, are there any other
24 department meetings or other meetings where nurses have the
25 occasion to interact with managers or supervisors?

1 A We have our staff meetings.

2 Q How often do those occur?

3 A Once a quarter.

4 Q Okay. So let's talk for a minute about the identification
5 badges.

6 JUDGE WEDEKIND: Could I just ask you real quick? What
7 does One Legacy mean?

8 THE WITNESS: It's a program, so when a patient is
9 passing, the nurses on my unit are directed to call that line
10 to see that the members of that particular program come out to
11 speak to the parents about organ donation.

12 JUDGE WEDEKIND: Okay. Thank you. Is it affiliated with
13 the hospital in any way, One Legacy?

14 THE WITNESS: I'm not sure about that. They've always
15 been there. They're the one -- phone number that we call.

16 JUDGE WEDEKIND: I see. Okay.

17 Q BY MS. PARKER: Do you see -- let's revisit General
18 Counsel's Exhibit 7. So in that photograph, I'm looking at
19 your identification badge and I see some -- looks like a gray
20 ribbon and a pink ribbon on your identification badge. Could
21 you describe what those are?

22 A The gray ribbon is to represent brain cancer support and
23 the pink ribbon is for breast cancer support.

24 Q And how is that you affix those pins to the identification
25 badge?

1 A There's small holes in the plastic.

2 Q And do these pins have backings?

3 A Yes, they do.

4 Q Okay. Did the hospital issue you those -- the pink and
5 gray ribbon pins?

6 A No.

7 Q How did you obtain them?

8 A The pink one was in honor of my friend who passed from
9 breast cancer and the gray one we actually passed out in the
10 unit in support of one of our nurses having brain cancer.

11 JUDGE WEDEKIND: Who's we?

12 THE WITNESS: It was me and one other nurse who were
13 passing them out to management as well as to our fellow nurses.

14 Q BY MS. PARKER: All right. And since July, 2015, have you
15 seen employees wear other -- wear pins on their identification
16 badges?

17 A Yes.

18 Q What types have you seen registered nurses wear on their
19 identification badges?

20 A Besides the ribbons, we do have character pins. Again,
21 from Disney, like Ariel or Mickey Mouse. We'll do our Memorial
22 pin like I have in that photo. It's my 15 year pin that was
23 given to me.

24 Q So in that photo, what are you referring to specifically?

25 A It's the one in the middle that's circular that represents

1 my 15 years with Memorial. And they gave it to me at a service
2 award luncheon. So it's on my badge.

3 Q And any other types of pins that you've seen registered
4 nurses wear on their identification badges?

5 A Yes. Various different ones, either supporting other
6 cancers and/or other pins given to us by Memorial.

7 Q What types of pins does Memorial issue --

8 A Oh.

9 Q -- to employees?

10 A Well, Memorial issued the service award ones. Sometimes
11 there'll be one for service excellence. I think we had some
12 for magnet. Otherwise it's been just pins from the outside.
13 Our certification pins. If you're certified in any of the
14 departments or any of the nursing, you can wear those.

15 Q And what do you mean by pins from the outside?

16 A That would be like your certification pin that's given to
17 you when you certify as a pediatric nurse or a CNN, all the
18 various ones that the extra certifications nurses can take.

19 Q Okay. I'm going to show you a document that's been marked
20 as General Counsel's 14. And could you describe the image
21 that's in General Counsel's Exhibit 14?

22 A Those are my service award pins from my five year, my ten
23 year and my 15 year of tenure.

24 Q Okay. And do you ever put these pins on your
25 identification badge?

1 A Yes.

2 Q Are they -- do you currently put them on your -- I mean,
3 do they -- do you have them on your identification badge
4 currently?

5 A I have one. My 15 year.

6 Q Why don't you have the other two on your identification
7 badge?

8 A The backing came off of my first one. And the second one,
9 I just -- I'm not wearing, because I was worried that when I
10 screwed it in, it would come off. So I got a different backing
11 from my 15 year one.

12 Q Do you have any issues with the backing on the pins that
13 the hospital has issued to you?

14 A They screw in, so they come unscrewed.

15 Q Are you aware of the hospital issuing stickers to
16 employees?

17 A No.

18 Q In the same way that the hospital sometimes provides pins
19 as a reward, are you aware of any hos -- the hospital issuing
20 stickers to registered nurses?

21 A I think there was a hand washing one once and there was
22 magnet one when we first went magnet, I think.

23 Q Okay. What do you mean by hand washing sticker?

24 A It was for good hand washing. So when they came back and
25 audited us on our hand washing techniques, they -- it was kind

1 of like secret shopper. They'd come and watch you hand wash.

2 And if you did well, they would give you a sticker.

3 Q And who's they?

4 A It was whoever was auditing that day. It was usually
5 another nurse from a different department.

6 Q Was this a hospital program or hospital audit?

7 A Yes.

8 Q And after those -- when did this occur?

9 A Oh, maybe ten years ago.

10 Q Oh, it was a while ago.

11 A Yeah.

12 Q Okay.

13 JUDGE WEDEKIND: You use the word magnet --

14 THE WITNESS: Yes.

15 JUDGE WEDEKIND: -- a couple times. What are you
16 referring to?

17 THE WITNESS: Magnet is a designation that the hospitals
18 get. When we are doing all the appropriate things the hospital
19 can put in for magnet status. And we've been awarded it.

20 JUDGE WEDEKIND: Okay.

21 MS. PARKER: Okay. I'd like to offer General Counsel's
22 Exhibits 12 through 14 into evidence.

23 JUDGE WEDEKIND: Any objection?

24 MR. ABRAHMS: No objection.

25 MR. BERUL: No objections.

1 JUDGE WEDEKIND: They're received.

2 **(General Counsel Exhibit Number 12 through 14 Received into**
3 **Evidence)**

4 MS. PARKER: That's all that I have right now. At this
5 time.

6 JUDGE WEDEKIND: Okay. Charging Party, any questions?

7 MR. BERUL: I don't actually. It was a thorough job. No,
8 I don't have any questions.

9 MS. PARKER: Okay. All right.

10 JUDGE WEDEKIND: Respondent?

11 MR. ABRAHMS: We'd ask the GC produce any Jencks
12 affidavits or statements. We'd ask for a five minute recess.

13 JUDGE WEDEKIND: So you've got two of them?

14 MS. PARKER: It's the --

15 MR. ABRAHMS: It's original and copy.

16 MS. PARKER: -- original and copies. There's some colored
17 images and the copy --

18 JUDGE WEDEKIND: Okay.

19 MS. PARKER: -- isn't as high quality.

20 JUDGE WEDEKIND: Want some time?

21 MR. ABRAHMS: Yes, please.

22 JUDGE WEDEKIND: Okay. Let's go off the record.

23 (Off the record at 3:33 p.m.)

24 JUDGE WEDEKIND: Cross?

25 MR. ABRAHMS: Thank you.

1

CROSS-EXAMINATION

2 Q BY MR. ABRAHMS: Good afternoon, Ms. Welch.

3 A Good afternoon.

4 Q Just to -- let's start with the pins that you were talking
5 about. The -- looking at General Counsel's Exhibit 14. First,
6 you -- well, is it fair to say that this change that -- in
7 uniform that happened in late 2014 going into 2015, that was
8 kind of a fairly visible event. Everybody was aware that it
9 was going on and you certainly were aware as -- based on your
10 role within the union?

11 A Yes.

12 Q Okay. And there were lots of different parts to that
13 change, that -- the new uniform and appearance policy. You
14 talked about the -- for the first time, you guys had to wear
15 standard issue scrubs and then plus stuff about jewelry and all
16 sorts of other things, correct?

17 A All sorts of stuff? I'm sorry.

18 Q I mean, there was lots -- there was a lot of different
19 changes. It wasn't just the badge reel. It was -- you had new
20 uniforms. You had new rules about bare below the elbows. You
21 had rules about jewelry. Those were all kind of new rules that
22 were part of this -- of union -- the uniform and appearance
23 policy, correct?

24 MR. BERUL: That -- I just would like to object to the
25 compound nature of the question. I'm sorry to ask you to go

1 through it a little more step by step.

2 MR. ABRAHMS: All right. Let me -- I'll just -- I'll back
3 up.

4 Q BY MR. ABRAHMS: What -- generally speaking or big
5 picture, what did you understand to be the changes that were
6 being implemented with the new uniform and appearance policy?

7 A That there would be changes.

8 Q Okay. And as those rolled out, what were the major
9 aspects of those changes that stand out in your mind?

10 A The uniform.

11 Q That you have to wear a standard issue scrub set.

12 A Yes.

13 Q Okay. And you in fact engaged in some discussions with
14 hospital management before those policies were finalized. Is
15 that right?

16 A Yes.

17 Q Okay.

18 MS. PARKER: Objection. That's beyond the scope of
19 direct.

20 JUDGE WEDEKIND: Well, as this is background, I'm not sure
21 I understand the relevance of --

22 MR. ABRAHMS: Well, at this point --

23 JUDGE WEDEKIND: -- whether she had discu --

24 MR. ABRAHMS: -- yeah, it is just background. I just want
25 to understand what she unders -- we're bringing in -- there's

1 two different -- I'm trying to make sure that -- from her
2 perspective to understand the division, if there is one,
3 between the pins and the badge holders.

4 JUDGE WEDEKIND: Go ahead. Overruled.

5 THE WITNESS: Could you restate the question, please?

6 Q BY MR. ABRAHMS: You were engaged in some discussions with
7 hospital management in your capacity as a union rep related to
8 those policies before they were finalized?

9 A Yes.

10 Q Okay. At any point in time, did you believe that the
11 hospital's rules related to the wearing of service pins on your
12 badge holder had changed?

13 A No.

14 Q Okay. So the rules, as you understood it, in terms of
15 what employees could wear or could not wear in terms of pins on
16 their badge had been the same?

17 A Yes.

18 Q Okay. And you had for as long as -- you said you've been
19 there, have been issued these -- or you -- these type of
20 service pins, based on how many years you've been at the
21 hospital?

22 A Yes.

23 Q And there are other types of, you said, certification pins
24 or other professional designation type pins?

25 A Yes.

1 Q Okay. And that's what you have generally seen on badges.

2 A No.

3 Q Okay. What have you generally seen on badges?

4 A Like a stated before, a variance of different types of
5 pins ranging from Disney characters to breast cancer awareness,
6 all the different cancer awarenesses and our services pins.

7 Q Okay. Have you ever seen a union pin?

8 A Yes.

9 Q Okay. Has anybody ever told you to stop wearing a union
10 pin?

11 A I have not worn a union pin.

12 Q Okay. Are you aware of anybody in management ever telling
13 someone to stop wearing a union pin on their badge holder?

14 A No.

15 Q Okay. And again, as far as you understood, the rules and
16 regulations related to how pins could be worn has remained
17 unchanged for many years?

18 A Correct.

19 Q Okay.

20 JUDGE WEDEKIND: Were the union pins on the badge?

21 THE WITNESS: They have had some on the badge.

22 JUDGE WEDEKIND: On the badge.

23 Q BY MR. ABRAHMS: How recently have you seen somebody with
24 a union pin on their badge?

25 A I cannot recall.

1 Q Within the last two years?

2 A I cannot recall.

3 Q Okay. How recently have you seen somebody with a cartoon
4 character on their badge?

5 A In the elevator Thursday night.

6 Q Okay. Have you ever -- was that -- who was that?

7 A I don't know the name of the employee.

8 Q Were they in their uniform?

9 A They were.

10 Q Were they a direct patient care provider?

11 A Yes.

12 Q Okay. When did you first learn that the hospital would be
13 changing the uniform and appearance policy or coming up with a
14 new uniform and appearance policy?

15 A I don't recall when it actually started to come out as
16 rumors.

17 Q You heard it first as rumors?

18 A As rumors, yes.

19 Q Okay. And then at some point, you had some discussions --
20 how did -- did it come some -- did it -- when did it go from
21 being rumors to something more substantial?

22 A I don't know when the committee was formed.

23 Q When did you first have any official communication or
24 discussions, notice from the hospital?

25 A It was summer prior to implementation. So the summer of

1 2014.

2 Q Okay. And I think you said before the change, you wore
3 lanyards?

4 A Yes.

5 Q And you wore various types of lanyards?

6 A Yes.

7 Q Did you ever have a CNA lanyard?

8 A Yes.

9 Q Did you -- and did you ever wear that?

10 A Yes.

11 Q And before the change, did anybody tell you to not wear
12 the CNA lanyard, but the cartoon ones were fine?

13 A No.

14 Q So the -- so it really didn't matter what the lanyard said
15 as far as you could tell back then.

16 A No.

17 Q And I think you also said that you didn't start wearing
18 the CNA badge reel until February after the policy had changed?

19 A Yes.

20 Q So that would have been February of 2015?

21 A Yes.

22 Q And you wore that between February of 2015 and the date
23 you had the conversation with Ms. Coonan.

24 A Yes.

25 Q You said July 9th of 2015?

1 A Yes.

2 Q And you didn't wear it before that or after that. You
3 didn't -- I'm sorry. You didn't wear it before February of
4 2015 or after July of 2015?

5 A No.

6 Q When you started to wear the -- well in February, when you
7 wearing the CNA badge reel, did you understand that it was
8 outside of the hospital policy?

9 A No.

10 Q You did not know that?

11 A No.

12 Q Okay. It was -- when did you first learn that?

13 A July 9th, 2015.

14 Q Okay. And at that point, you stopped wearing it?

15 A Yes.

16 Q In your capacity as a representative of the union, did you
17 have discussions -- well you already had -- you already said
18 that. You had discussions with people in management about this
19 policy that was going to be rolled out.

20 A One discussion.

21 Q You recall only one discussion?

22 A One meeting I was in.

23 Q Okay. Who else was in that meeting?

24 A Cinthya Hanna, Kenny Salvane and I know Cinthya was.

25 Q And you're gesturing to Cinthya Rocha.

1 A Cinthya Rocha. Uh-huh.

2 Q And Cinthya Rocha was there on behalf of the hospital?

3 A Yes.

4 Q Was there anybody else there on behalf of the hospital
5 that you can recall?

6 A I don't recall.

7 Q Okay. Do you recall that before the actual implementation
8 of the new policy, which I think you said was December of 2014?

9 A I believe so.

10 Q Okay. That's the date everybody was supposed to start
11 wearing their new uniforms.

12 A Yes.

13 Q Okay. And before that, you had been told in your capacity
14 as a union rep that all RNs who were providing direct patient
15 care were going to be issued a standard issue badge holder.

16 A Yes.

17 Q Okay. And you understood that that was the intent of the
18 policy was that everybody would be given a uniform badge holder
19 that they were supposed to wear?

20 A No.

21 Q You did not understand?

22 A No.

23 Q What did you understand was the requirement?

24 A We could wear any badge holder.

25 JUDGE WEDEKIND: I just want to clarify. Was it your

1 understanding that you had to wear a badge reel?

2 THE WITNESS: Yes.

3 JUDGE WEDEKIND: Of some kind.

4 THE WITNESS: Of some kind.

5 JUDGE WEDEKIND: Okay.

6 Q BY MR. ABRAHMS: So you understood you had to wear a badge
7 reel. You und -- well, let's backup. Lanyards were no longer
8 allowed.

9 A Yes.

10 Q Was it explained to you why lanyards were no longer
11 allowed?

12 A No.

13 Q You don't recall being told why?

14 A No.

15 Q Okay. And I think you said that you could either use the
16 clip that came on the plastic badge holder, which I'm holding
17 up here, or you could use a badge reel. Is that right?

18 A Yes.

19 Q Okay. So you could either have just a plain metal clip or
20 the Memorial Care issued badge reel.

21 A Any badge reel.

22 Q When did you -- what made you believe you could have any
23 badge reel?

24 A We had a meeting where the badge reels and the wedding
25 rings were discussed.

1 Q Okay. So let's backup, just so the Judge -- probably the
2 first time you've heard the term wedding rings. What about the
3 wedding rings?

4 A They originally -- I should say Memorial originally did
5 not want the nurses to wear any wedding rings that had jewelry
6 on them, diamonds.

7 Q Okay. Did they explain to you why?

8 A They had stated it was infectious.

9 Q Okay. And how did you relate that to the badge holder?

10 A We had a discussion the same day.

11 Q Okay. And with who?

12 A It was with Cinthya Rocha, Cynthia Hanna and Kenny
13 Salvane.

14 Q Okay. So -- and you think that Cinthya Rocha was the only
15 person from the hospital side in that discussion?

16 A I know there were other people there. I just can't recall
17 who.

18 Q Oh, okay. Okay. Okay. And you brought up the wedding
19 rings. And did somebody also bring up the badge holders?

20 A Yes. I was there primarily for the wedding ring issue.

21 Q And was somebody else there for the badge holder?

22 A Yes. But I don't recall who it was.

23 Q Okay. And they raised it at that point.

24 A Yes.

25 Q And that was because they understood that the hospital's

1 policy was being drafted to say that only the uniform badge
2 holder could be used.

3 A Yes.

4 Q Okay. So it was your understanding going into the meeting
5 that the new policy was going to require only MHS provided
6 uniform badge reels?

7 A The discussion would be to discuss that option.

8 Q Okay. But that was the -- your understanding is that's
9 what the hospital wanted?

10 A Correct.

11 Q All right. It was only -- it wasn't that an approved one
12 or some approval process. It was that the hospital was
13 actually -- it was -- the hospital's draft policy was such that
14 it was going to give every nurse a specific badge holder and
15 that was going to be the one that they used.

16 MR. BERUL: I'm just going to object, because I think
17 we're getting -- I understand the background issue. But we're
18 getting into -- so far into the bargaining aspect that I had
19 represented early we withdrew for the reasons stated on the
20 record. This is not a bargaining case. And I don't know how
21 much Mr. Abrahms is probing into this. But I find it
22 irrelevant -- on relevancy grounds.

23 JUDGE WEDEKIND: Yeah. I guess I understand what you're
24 saying. Yeah. I'm not sure I understand the relevance of what
25 she thought.

1 MR. ABRAHMS: Sure, Your Honor. I guess the distinction
2 is that the -- well, first as Your Honor pointed out, it's
3 going to be what a reasonable understanding of a rule would be.
4 And from the new amendment that the General -- Counsel for
5 General Counsel put forward, it made it sound as if they were
6 going -- a theory of their case was that there were badge reels
7 that might just be approved.

8 Like you could go in and argue, "Hey, can I wear this
9 one?"

10 And HR would say, "Yeah, go ahead. That one's okay, but
11 that one's not."

12 And the distinction I'm trying to get at is that everybody
13 understood that the question was whether it was going to be a
14 unif -- there's a distinction between having a uniform badge
15 reel and having one that anybody could just -- you might -- you
16 have to go ask permission for.

17 JUDGE WEDEKIND: Yeah, but isn't the alle -- I mean, isn't
18 the theory that -- I mean, if the policy says you have to get
19 permission, and you're saying it was clear that you wouldn't
20 get permission, how does that help your defense?

21 MR. ABRAHMS: Well, it goes to -- the issue is not whether
22 or not there. If it was generally understood. Everybody
23 understood that the rule required you to wear a specific
24 uniform badge reel --

25 JUDGE WEDEKIND: Yeah.

1 MR. ABRAHMS: -- that's a different issue than -- and
2 that's what -- how the rule read. That's how people understood
3 the rule. That was the discussion with the union. That's what
4 the other evidence that we'll put on will show.

5 JUDGE WEDEKIND: Uh-huh.

6 MR. ABRAHMS: Then it goes to do we have a basis for doing
7 that? And there's a much different, I think analysis that goes
8 into whether or not this is a -- something where the hospital
9 is exercising discretion of some sort, as was alleged in the
10 opening statement and the amendment.

11 JUDGE WEDEKIND: Here's the problem, okay? When you open
12 the door into what she thought, what was discussed at meetings,
13 what was the bargaining about this and they want to -- you
14 know, if I say that's relevant, then they're going to want to
15 put on evidence about what was discussed, what people thought,
16 you know, whether there was bargaining about it, how is that
17 relevant?

18 I mean, it's -- the allegation is maintain the rule, two
19 rules now, okay. And disparately enforce it. So I mean, it's
20 -- how is motive, intent, anything relevant to that? I mean,
21 you can -- if you want to put on -- I suppose maybe you want to
22 put on evidence of special circumstances.

23 MR. ABRAHMS: Correct.

24 JUDGE WEDEKIND: This is special circumstances. But
25 again, why is any of this relevant? This what I'm concerned

1 about, for example. How far are you going to go with this?

2 Are you just starting with this line of questioning or are we
3 going to call in people to discuss what was discussed --

4 MR. ABRAHMS: Well, if --

5 JUDGE WEDEKIND: -- at this meeting?

6 MR. ABRAHMS: -- I mean, if -- I think what we need to
7 establish is that the question here is not whether or not the
8 rule had some discretion in it.

9 JUDGE WEDEKIND: Because that was my next point. It
10 really doesn't, does it? You're not eve -- you're not alleging
11 there was any discretion.

12 MR. ABRAHMS: No, our --

13 JUDGE WEDEKIND: You have a clear rule.

14 MR. ABRAHMS: -- our --

15 JUDGE WEDEKIND: Yeah.

16 MR. ABRAHMS: -- we're saying the rule is you wear the
17 hospital issued badge reel. That's it.

18 JUDGE WEDEKIND: Right. Right. And you have to get
19 permission for anything else. That's what the rule says.

20 MR. ABRAHMS: Well, there is no permission for anything
21 else.

22 JUDGE WEDEKIND: Well yeah.

23 MR. ABRAHMS: Right. And so that's what --

24 JUDGE WEDEKIND: Yeah. What's -- you see what I mean?

25 It's like -- because you're really opening up a door here, I

1 think, that we don't really want to go down.

2 MR. ABRAHMS: Okay.

3 JUDGE WEDEKIND: Yeah.

4 MR. ABRAHMS: I can narrow it.

5 JUDGE WEDEKIND: Okay.

6 Q BY MR. ABRAHMS: Once all these discussions were done, you
7 had access to the final rules, correct? On the intranet, you
8 could see that -- you could look up the uniform rule and the
9 appearance policy, the two policies that were -- here. Do you
10 still have those up there?

11 MR. ABRAHMS: Can I --

12 THE WITNESS: Yes.

13 MR. ABRAHMS: Can the witness be shown what was GC
14 Exhibits 5 and 6?

15 JUDGE WEDEKIND: Just to put a nail in it. My point is
16 that even if she knew she was violating a rule, I don't think
17 that changes anything. See what I mean?

18 MR. ABRAHMS: Yeah, no.

19 JUDGE WEDEKIND: Okay.

20 MR. ABRAHMS: Right.

21 Q BY MR. ABRAHMS: You had access to those once they were
22 finalized, correct?

23 A Correct.

24 Q Yes. Okay and in fact, you went and looked them up after
25 Ms. Coonan told you to -- or your conversation with Ms. Coonan

1 about yours?

2 A Yes.

3 Q Okay. And you brought them to the Region's attention when
4 you gave an affidavit. Isn't that right?

5 A Yes.

6 Q Okay. In February, when you first started wearing the CNA
7 badge reel, you said you wore it, because the hospital issued
8 one broke?

9 A Yes.

10 Q Okay. So that presumes at some point, you were provided a
11 hospital issued badge reel?

12 A Yes.

13 Q Okay. And when you do you think that was the first time?

14 A I don't recall. I don't recall when we received them.

15 Q Okay. How long do you recall having it before it broke?

16 A A few weeks.

17 Q Okay. Do you know whether or not there was subsequently

18 -- whether they changed the design of the badge reel or

19 anything? Did --

20 A Yes, they did.

21 Q What do you recall about that?

22 A The prior one was very heavy. And it was almost metallic
23 in nature. So it would drag our identification badges into
24 under the arm. And so they changed them to a lighter one.

25 Q Okay. So it -- the design itself was problematic.

- 1 A Correct.
- 2 Q Okay. And so do you recall whether they issued everybody
- 3 new ones?
- 4 A I don't recall if they gave them to everybody.
- 5 Q Did you subsequently get a new one?
- 6 A Yes.
- 7 Q Okay. And who gave you a -- the second one?
- 8 A My assistant unit manager.
- 9 Q Okay. What's his or her name?
- 10 A I believe it was Savor Velasquez.
- 11 Q Okay. Because you have multiple --
- 12 A Correct.
- 13 Q -- and sometimes you'll say AUM for that, assistant unit
- 14 manager, correct?
- 15 A Yes.
- 16 Q Okay. So you have multiple AUMs. And one of them
- 17 distributed it to you.
- 18 A Yes.
- 19 Q Okay. What was said when it was distributed to you? Do
- 20 you recall?
- 21 A I do not recall.
- 22 Q Okay. Do you know what -- how many versions of the
- 23 Memorial Care badge reel were distributed to people?
- 24 A No.
- 25 Q Let's look at Exhibit 7, which is a picture of you. Okay.

1 So just to make sure that this is clear for the record. You're
2 clipping that to a -- like an extra piece of cloth that's
3 designed into your uniform?

4 A Yes.

5 Q Okay. And is that the only place you're supposed to clip
6 that?

7 A Yes.

8 Q Okay. You -- now when you had -- before the uniform --
9 the new uniform policy went into effect, did most scrubs have
10 that little piece of cloth there? Is that normal, if you just
11 went into a uniform supply store?

12 A No.

13 Q Okay. So this was kind of new for the -- this new uniform
14 change?

15 A Yes.

16 Q Okay. Do you have any idea as to why that was placed
17 there and that -- up in -- so that -- well, strike that. How
18 did you come to know that everybody had to wear it on their
19 right side? The badge hol -- the badge needed to be displayed
20 on the right side? Was that part of --

21 MR. BERUL: It --

22 THE WITNESS: It was stated in a huddle.

23 Q BY MR. ABRAHMS: Okay.

24 MR. BERUL: Okay. It's already been answered. It's okay.

25 I'll withdraw the objection.

1 Q BY MR. ABRAHMS: Okay. So when you were describing that
2 the other one was kind of large and it would pull down that
3 little piece of cloth, is that what you were -- the other badge
4 reel that you said was too large, the first version?

5 A Yes.

6 Q And it would make your badge actually go underneath your
7 arm, so people couldn't see it.

8 A Yes.

9 Q And I imagine it probably wasn't very comfortable, either.

10 A No.

11 Q When your badge broke in February, did you ask for a new
12 one? Or I'm sorry. When your badge reel broke, did you ask
13 for a new one?

14 A No.

15 Q Okay. And you just -- that's when you started wearing
16 your CNA badge reel?

17 A Yes.

18 Q Okay. I'm going to ask you -- I'm going to hand you a
19 copy of the affidavit you provided to the Counsel for the
20 General Counsel. I'm going to direct your attention, just to
21 refresh your memory. If you could go to page four line six.
22 Actually, start -- I'm sorry. Line five. And if you could
23 read from line five, where it starts, "At to the end of line
24 eight."

25 A All right. I'm lost.

1 Q So if you go on page four, where it says --

2 A Oh, I'm on page three.

3 Q -- large -- and then got to page -- or line five. And
4 read from the sentence that starts, "At that point."

5 A "At that point, I resumed wearing my badge holder, which
6 contains the union's logo. I had worn the badge holder for
7 years prior to the recent uniform policy changes without issue.
8 I still continued to wear the employer issued badge holder, but
9 clipped it to my right pocket of my scrubs along with my
10 watch."

11 Q So you had actually worn the union badge reel prior to the
12 uniform change?

13 A Yes.

14 Q So you didn't start wearing it in February.

15 A I don't understand.

16 Q You said you started -- you'd never worn it before
17 February of 2015?

18 A No, that's not what I stated.

19 Q When did you first start wearing the CNA badge reel?

20 A The reel holder? I'd worn reel holders on and off, I
21 think, but mostly it was my lanyard, not the reel holder.

22 Q Okay. So when was -- had you ever worn the CNA badge reel
23 that you had provided in similar to the one that's in General
24 Counsel Exhibit 10 prior to February of 2015?

25 A No.

1 Q Okay. So what were you referring to in this sentence that
2 said, at that point I resumed wearing my badge holder, which
3 contains --

4 A My lanyard.

5 Q So you started wearing a lanyard again?

6 A No.

7 Q Okay. You just -- I understand. And before July 9th when
8 you had this conversation with Ms. Coonan, had you seen other
9 areas where people were not following the uniform policy, other
10 than the badge reel? Did you see anybody else with -- wearing
11 the wrong color scrubs or doing anything like that?

12 A Yes.

13 Q Is it fair to say that it was kind of a gradual
14 implementation process that took people some time to get used
15 to all of the changes that were part of this new policy?

16 A No.

17 Q You didn't feel that way?

18 A NO.

19 Q How often did you see somebody who was not 100 percent
20 following the policy?

21 A Often.

22 Q And in various different ways?

23 A Yes.

24 Q And are you aware if any of them had ever been talked to
25 and told they need to -- you're not wearing the right color

1 scrub or you're not wearing, you know, whatever other issue
2 there might have been?

3 A No.

4 Q So you didn't see them get -- would you -- strike that.
5 When Ms. Coonan came and talked to you, you had a -- prior to
6 her saying something to you, you said you went to talk to her
7 about a union issue?

8 A Yes.

9 Q And did that, whatever that issue that you had was, did
10 that ultimately resolve amicably?

11 A Yes.

12 Q So you had a discussion with her and at the end of that
13 conversation, she -- what exactly did she say to you?

14 A I believe it was, "You have to remove that."

15 Q Okay. And did you know what she was referring to right at
16 that time?

17 A No. I did ask her what.

18 Q Okay. And then she told you it was the badge reel?

19 A Yes.

20 Q Okay. Did she make you take it off right there in front
21 of you?

22 A I did take it off in front of her.

23 Q Did you have the other badge reel holder?

24 A I had the heavy one, the first one.

25 Q Okay, so you had that on you at the time?

1 A It was clipped with my watch on my pocket.

2 Q Okay. Did she write you up?

3 A No.

4 Q Were you disciplined in any way?

5 MR. BERUL: Objection as to relevance. The complaint
6 doesn't allege any 8(a)3.

7 JUDGE WEDEKIND: Are you disputing the fact that she was
8 told to take it off?

9 MR. ABRAHMS: No, I want to -- we're going to point out
10 that she was treated the same way everybody else was and so I
11 want -- it's consistent what was -- what she alleges happened.

12 JUDGE WEDEKIND: Well, if you admit that she was told to
13 take it off, I'm not sure what the relevance of whether she was
14 disciplined. You admit that a supervisor, agent of the company
15 told her to take it off?

16 MR. ABRAHMS: No. We'll put our witness on, but knowing
17 what from her perspective what happened to her I think is
18 relevant to whether it's the same as happened to somebody else.

19 JUDGE WEDEKIND: Well, if you think it's relevant, go
20 ahead.

21 Q BY MR. ABRAHMS: Okay. so after she told you to take it
22 off, you took it off?

23 A Yes.

24 Q Okay. And did she actually tell you, take this off right
25 now or did she just say, you can't wear that?

1 A You have to take that off.

2 Q And you understood it to mean, right now?

3 A Yes.

4 Q Okay. Did anything else happen after that, related to the
5 badge reel?

6 A What do you mean else happened?

7 Q Did you have a subsequent meeting or discussion? Did she
8 come back and check up on you? Was there anything else at all
9 that happened between you and Ms. Coonan related to the badge
10 reel?

11 A No.

12 Q Okay. So this is one conversation you replaced it and
13 that was it?

14 A Yes.

15 Q Do you know whether or not she ever checked up on you? In
16 other words, did she come back to you and say, let me make sure
17 you're still in your uniform, you're wearing the right badge
18 reel?

19 A No.

20 Q Did she -- when she asked you to remove it, did she
21 mention that it was anything about the union?

22 MR. BERUL: Objection. I mean, it doesn't allege
23 interrogation. It's getting into all sorts of knots that are
24 not there. Relevancy.

25 JUDGE WEDEKIND: You're not alleging that it was

1 discriminatorily enforced.

2 MR. ABRAHMS: Well, they're saying it's disparately
3 enforced, so if it's, that's not the uniform take it off,
4 that's, I think, different than, I don't like CNA, take it off.

5 JUDGE WEDEKIND: Yeah. Overruled. Go ahead. You can ask
6 it.

7 Q BY MR. ABRAHMS: Was there any mention of the union's logo
8 or anything like that?

9 A No.

10 Q Okay. One second.

11 (Counsel confer)

12 Q BY MR. ABRAHMS: Just real quickly, if you go to GC
13 Exhibit 12, the picture of Shari. Shari is a good friend of
14 yours; is that true?

15 A Correct.

16 Q Shari, does she work in your unit?

17 A Not any longer.

18 Q Okay. In fact, on July 9th, she was on light duty; is
19 that right?

20 A Correct.

21 Q And are you aware whether or not typically when RNs are on
22 light duty, they're told not to wear their uniform, so as not
23 to do confuse them with RNs who can actually perform patient
24 care?

25 A I learned that with that particular situation, yes.

1 Q Okay. So at this time, on this day, Shari was not a
2 patient care provider?

3 A Correct.

4 Q And she wasn't in uniform of any kind at that point?

5 A She was still wearing scrub bottoms and she wore a
6 Memorial approved top.

7 Q Okay. But not in uniform as a patient care provider?

8 A Correct.

9 Q If we look at GC Exhibits 13 the picture of you and Deanna
10 or the picture you took of Deanna. I'm sorry, Ms. Rocha. Is
11 where she has that -- her badge reel clipped is that -- so do
12 you have an understanding of whether or not that is permitted
13 by the policy?

14 A Rephrase that?

15 Q Sure. She has her badge reel clipped on her -- the left
16 side of her collar. Is that permitted by the policy?

17 A No.

18 Q Regardless of what the badge reel itself says?

19 A No.

20 Q And you went some five months, roughly, wearing the CNA
21 badge reel before anybody said anything?

22 A Yes.

23 Q In terms of the other employees you say that you saw
24 wearing badge reels, various cartoon characters, were some of
25 those before July 9th?

1 A Yes.

2 Q Okay. How many of them were after July 9th?

3 A I currently see them daily.

4 Q And are all of those people RNs?

5 A Yes.

6 Q Do you know whether or not anybody is wearing a CNA?

7 A I don't know.

8 Q And you don't have any reason to believe anybody ever told
9 them, these people that you've seen, that it's okay for them to
10 wear their badge reel that's not the hospital uniform badge
11 reel?

12 A I would not know that.

13 Q Okay.

14 MR. ABRAHMS: I have nothing else.

15 JUDGE WEDEKIND: Any redirect?

16 MS. PARKER: Yeah, just a couple of questions and then
17 we'll let you go home. I know you've been here a long time.

18 **REDIRECT EXAMINATION**

19 Q BY MS. PARKER: Okay, now let me turn your attention to
20 General Counsel's Exhibit 12. And this image of Shari that you
21 took and as you described she's wearing a Little Mermaid badge
22 holder. Is this representative of other types of badge holders
23 you've seen employees wear at the hospital?

24 A Yes.

25 Q Aside from Shari, have you seen other employees since you

1 were asked to remove your CNA badge holder, wearing Little
2 Mermaid character badge holders?

3 A Yes.

4 Q And it looks like there's little rhinestones glued to the
5 outside of that badge holder; is that correct?

6 A Yes.

7 Q And then on Shari's identification badge, I see a
8 little -- it looks like a little pin. Do you know what that
9 is?

10 A It's her service pin.

11 Q And what is that image, what is depicted?

12 A It looks like it's our service pin that we have. Oh, no.
13 That looks like a cat.

14 Q It's a cat?

15 A It looks like a cat. Oh, you know what, it's Precious
16 Moments. It's a nurse.

17 Q It's a Precious Moments --

18 A It's a Precious Moments nurse.

19 Q And what is Precious Moments?

20 A It's just a popular brand that's out there for figurines
21 and pins and that type of thing.

22 Q Okay. And I think you still have a copy of your affidavit
23 in front of you. I just want to clarify something quickly.

24 Now, do you recall the policies that you provided the Region as
25 exhibits to that affidavit? Just if you know, did you provide

1 a copy of policy 261.02?

2 A Yes.

3 Q Can you verify if that's an exhibit that's attached to the
4 affidavit, it's attached to the affidavit.

5 A Okay. I don't see where those numbers are.

6 JUDGE WEDEKIND: Is that the appearance policy? Is that
7 the appearance policy?

8 MS. PARKER: Yes.

9 JUDGE WEDEKIND: Do you see one that says appearance
10 policy on it?

11 MS. PARKER: It would say reference PC261.01 at the top.

12 THE WITNESS: Oh, there it is. Yes.

13 Q BY MS. PARKER: Okay. So you provided a copy of 261.01.
14 Is there a copy of 261.02 attached to your affidavit?

15 A No there is not.

16 Q Now, also referring back to page 4, about line 5 where Mr.
17 Abrahms pointed out some testimony you had given during your
18 affidavit. You had read, I had worn that badge holder for
19 years prior to the use -- the recent uniform policy changes
20 without issue. Can you explain that? Were you referring to
21 the CNA lanyard and not a badge holder or was there a --

22 A I was referring to my CNA lanyard.

23 Q Lanyard. Now referring back to General Counsel's Exhibit
24 12, is Shari currently still on light duty?

25 A No.

1 Q Is she back working on regular duty at the hospital now?

2 A Yes.

3 Q And when did that occur?

4 A I don't recall when she came back.

5 Q And when she came back to full duty, did you see her
6 wearing that Ariel Little Mermaid badge holder that she wore
7 the day you took this image?

8 A Yes.

9 MS. PARKER: No further questions.

10 **RECROSS-EXAMINATION**

11 Q BY MR. ABRAHMS: Just to be clear, Shari never returned
12 back to the unit as a direct patient care RN, correct?

13 MR. BERUL: Before you jump in, I just want to note, I
14 don't have any questions.

15 MR. ABRAHMS: Oh, I'm sorry. I thought you gestured. I'm
16 sorry.

17 MR. BERUL: Okay.

18 THE WITNESS: Can you rephrase that please?

19 Q BY MR. ABRAHMS: Shari did not return back to the unit as
20 a direct care patient RN?

21 A Not in general peds, no.

22 Q Or any hospital RN unit?

23 A She's in an RN unit.

24 Q She's in the blood donor center, correct?

25 A Correct.

1 Q That's not a patient care floor?

2 A They still see patients.

3 Q Do they wear RN uniforms?

4 A Yes.

5 MR. ABRAHMS: No further questions.

6 JUDGE WEDEKIND: Excuse me, I'm not familiar with this
7 logo. How long has this particular logo on GC Exhibit 10 been
8 around the hospital?

9 THE WITNESS: I can't recall.

10 JUDGE WEDEKIND: Was it before February of 2015?

11 THE WITNESS: Yes.

12 JUDGE WEDEKIND: Was this particular logon GC-10 on your
13 lanyard?

14 THE WITNESS: No. I believe it said CNA.

15 JUDGE WEDEKIND: It just said CNA?

16 THE WITNESS: Uh-huh.

17 JUDGE WEDEKIND: So what was this logo on before February
18 2015?

19 THE WITNESS: Our paperwork, those.

20 JUDGE WEDEKIND: It was on CNA letterhead you mean?

21 THE WITNESS: Letterhead, uh-huh.

22 JUDGE WEDEKIND: And how long do you think it had been on
23 the letterhead?

24 THE WITNESS: I can't recall.

25 JUDGE WEDEKIND: You don't recall? Was it a long time or

1 a short time?

2 THE WITNESS: A long time now. Yeah.

3 JUDGE WEDEKIND: A long time. Okay. And can you describe
4 for us -- do you understand what it means, the logo?

5 THE WITNESS: I do, yes.

6 JUDGE WEDEKIND: Okay, can you explain it to us?

7 THE WITNESS: It looks like a heartbeat.

8 JUDGE WEDEKIND: Oh, so the bottom three squares you think
9 are --

10 THE WITNESS: They're part of your heartbeat, yeah.

11 JUDGE WEDEKIND: Like a heartbeat.

12 THE WITNESS: Your heart rhythm.

13 JUDGE WEDEKIND: Okay. And what's the tops, the big
14 square?

15 THE WITNESS: It's a heartbeat as well, but it also has an
16 N for national.

17 JUDGE WEDEKIND: Okay. Anything else? It's just
18 national?

19 THE WITNESS: National Nurses United, it's California
20 Nurses Association.

21 JUDGE WEDEKIND: So the N is for National union --

22 THE WITNESS: Yeah.

23 JUDGE WEDEKIND: United?

24 THE WITNESS: Yes.

25 JUDGE WEDEKIND: Okay. So CNA is not on it anywhere?

1 THE WITNESS: No.

2 JUDGE WEDEKIND: It's not a -- it's really more national
3 unions united.

4 THE WITNESS: Yes.

5 MR. BERUL: Excuse me, Your Honor, I believe you may be
6 holding it upside down.

7 THE WITNESS: Yeah. Turn it --

8 JUDGE WEDEKIND: Well, that's what GC-10 is, but what are
9 you saying?

10 THE WITNESS: That one.

11 JUDGE WEDEKIND: Oh, the three boxes are at the top of the
12 button?

13 THE WITNESS: Yes.

14 MR. BERUL: Yeah, those are at the top and then the
15 little --

16 JUDGE WEDEKIND: Oh, I see, you're right. Okay. I'm
17 sorry.

18 MR. BERUL: -- the one that would look more like an N is
19 at the bottom.

20 JUDGE WEDEKIND: Yeah, okay, I was confused on the
21 exhibit.

22 THE WITNESS: When you look at them.

23 MR. BERUL: Just the way it was photographed.

24 THE WITNESS: When you look at them, they kind of resemble
25 CNA.

1 JUDGE WEDEKIND: Well, that's what I thought, but is that
2 what it's supposed to be?

3 THE WITNESS: Yeah, they're heartbeats. Yes.

4 JUDGE WEDEKIND: But it's -- so it's heartbeats in the
5 three boxes?

6 THE WITNESS: Uh-huh.

7 JUDGE WEDEKIND: And what is the big box again?

8 THE WITNESS: The N.

9 JUDGE WEDEKIND: Just the N?

10 THE WITNESS: Yeah.

11 JUDGE WEDEKIND: Okay. Thanks. Anything else?

12 MR. ABRAHMS: Just a quick follow-up.

13 Q BY MR. ABRAHMS: So I think by -- you've answered lots of
14 questions. The lanyard you used to wear, did it --

15 MR. BERUL: Well, I'd like to object actually I think in
16 terms of order, Mr. Abrahms had stopped and now it was time --

17 MR. ABRAHMS: Oh, go ahead.

18 MR. BERUL: -- for -- if there was any redirect.

19 JUDGE WEDEKIND: Okay. Any -- you want to follow up on
20 what I said?

21 MS. PARKER: I don't. If you do.

22 **FURTHER REDIRECT EXAMINATION**

23 Q BY MR. BERUL: I'd just like to follow up a little bit
24 more on this as well. So in the affidavit section that you
25 were asked about and I don't have -- could I look at the

1 affidavit since -- that page, at least, since it's in evidence?
2 It's on the record, anyway. Okay, it's on page 4, lines 5
3 through 8. When you stated at that point you -- well you can
4 read it to yourself and just look up at me when you're done.
5 Just to refresh yourself again. Were you mixing in your mind
6 the idea of CNA materials, just in general, whether it be
7 lanyards or badge reels?

8 A Yes.

9 Q Thank you.

10 MR. BERUL: Nothing further.

11 JUDGE WEDEKIND: Anything else?

12 MR. ABRAHMS: Nothing further.

13 JUDGE WEDEKIND: Okay. Any further cross?

14 **FURTHER RECROSS-EXAMINATION**

15 Q BY MR. ABRAHMS: Okay, so there is a little bit of
16 artistic to the new CNA logo. Your old lanyard, did it -- it
17 had the older logo on it?

18 A I believe it just said CNA.

19 Q It just kind of in clear text said, California Nurses
20 Association?

21 A No, just CNA.

22 Q Just CNA?

23 A Yeah.

24 Q Any logoiing to it?

25 A Not that I recall.

1 Q Do you know if there is any type of healthcare
2 professional that also uses the anachronism CNA?

3 MR. BERUL: Objection, beyond the scope of everything.

4 JUDGE WEDEKIND: I can answer that question. Overruled.
5 You can answer the question.

6 THE WITNESS: Can you rephrase it?

7 Q BY MR. ABRAHMS: Do you know of any other kind -- if RNs
8 are referred to as -- registered nurses are sometimes called
9 RNs, correct?

10 A Correct.

11 Q Are you aware of any healthcare, direct healthcare
12 provider that uses the initial CNA?

13 A Nothing that comes to mind.

14 Q Okay.

15 MR. ABRAHMS: No further questions.

16 JUDGE WEDEKIND: Anything else?

17 MS. PARKER: No, Your Honor.

18 JUDGE WEDEKIND: Okay. Thank you very much.

19 THE WITNESS: Thank you.

20 JUDGE WEDEKIND: I'll remind you of the sequestration
21 order. Please don't discuss your testimony with any other
22 witness. Okay, let's go off the record for a second.
23 (Off the record at 4:50 p.m.)

24 JUDGE WEDEKIND: Back on the record. Could you raise your
25 right hand, please?

1 Whereupon,

2

THERESA STEWART

3 having been duly sworn, was called as a witness herein and was
4 examined and testified as follows:

5 JUDGE WEDEKIND: Thank you very much. Please state your
6 name and spell it for us.

7 THE WITNESS: Theresa, T-H-E-R-E-S-A. My middle initial
8 is M. and Stewart is S-T-E-W-A-R-T.

9 JUDGE WEDEKIND: Thank you very much.

10

DIRECT EXAMINATION

11 Q BY MS. PARKER: Good afternoon, Ms. Stewart.

12 A Good afternoon.

13 Q Thanks for waiting around and for your patience this
14 afternoon.

15 A You're welcome.

16 Q All right, so let's get started. Could you tell me, are
17 you currently employed?

18 A I am not. I retired.

19 Q And when was it that you retired?

20 A On January the 7th of this year.

21 Q And where did you retire from?

22 A Long Beach Memorial Medical Center.

23 Q And prior to your retirement, how long had you worked at
24 Long Beach Memorial?

25 A Eighteen years.

1 Q What was your position during the time you worked at Long
2 Beach?

3 A I'm a registered nurse.

4 Q And which department was it that you worked in at the time
5 you retired?

6 A I worked in the surgery pavilion which is also known as
7 outpatient surgery. It's the surgical services center for Long
8 Beach Memorial.

9 Q And prior to your retirement, how long were you in that
10 specific department?

11 A With consolidations, approximately seven years.

12 Q And could you briefly describe for me what your job duties
13 were as a registered nurse in that outpatient surgery
14 department?

15 A My duties and responsibilities were to provide direct and
16 indirect patient care to surgical patients. The primary focus
17 of the patient type for me was oncologic women's patients.
18 Those are generally patients who have cancer treatments. I
19 also took care of women's services. It was a service
20 consolidated into surgery services. So these could be fragile
21 patients. Patients who are experiencing the death of a dead
22 baby or a missed baby, an unexpected miscarriage, that type.
23 Uh-huh.

24 Q Okay. And at the time that you worked for Long Beach,
25 were you represented by a union?

1 A Yes.

2 Q Which union is that?

3 A California Nurses Association.

4 Q And during your employment at Long Beach did you hold any
5 positions with the union?

6 A Yes, I did.

7 Q Which positions were those?

8 A I was a nurse rep for -- since the inception of contracts
9 and I sat on the bargaining team for three consecutive contract
10 sessions.

11 Q Okay. So at the time of your retirement from Long Beach,
12 did the hospital require that registered nurses in your
13 department wear a specific uniform?

14 A Yes.

15 Q And could you describe that uniform requirement?

16 A It was a navy blue uniform. It was a top and a bottom
17 that were approved. You got to select from a variety of
18 different styles, whatever was becoming to your body, but it
19 was navy blue and it had the Long Beach Memorial logo on it and
20 the RN indicating your position as a registered nurse was
21 embroidered into the top.

22 Q And this uniform requirement t question just described,
23 was this the uniform requirement for all registered nurses at
24 the hospital?

25 A No.

1 Q And which nurses was this uniform applicable to?

2 A The uniform that I just described is applicable for those
3 nurses who are doing direct patient care. For registered
4 nurses who would be working in direct patient care in a surgery
5 area, their uniform garb is a little bit different. It's from
6 a laundry company and the uniforms are different in color and
7 also nurses who are not doing direct patient care, they can
8 wear lab coats and cover up tops, usually of white.

9 Q All right. And were you required to wear an
10 identification badge as part of your uniform?

11 A Yes.

12 Q Okay. And I think we already have a lot on the record
13 about the identification badge itself. I can go into it with
14 her or I think it's not an issue that's in dispute. But could
15 you describe for me what the purpose, as you understand it, of
16 the identification badge was?

17 A The identification badge allows you to clock in so you can
18 get paid; it allows you to park your vehicle on the campus,
19 because you can't get the gate to come up without your badge;
20 it allows you to go down corridors, open doors; you can't get
21 into certain areas such as the pharmacy without your badge.
22 Your badge is a security device, it is a picture ID, and it
23 allows the patient to see that indeed you are who you say you
24 are.

25 JUDGE WEDEKIND: So it sounds like you actually swipe the

1 badge sometimes?

2 THE WITNESS: You swipe it every day, multiple times.

3 JUDGE WEDEKIND: So you're not just showing it to someone,
4 you swipe it.

5 THE WITNESS: Oh, goodness. You each -- can I talk to
6 him?

7 MS. PARKER: Yes.

8 THE WITNESS: Each one of the doors, for example, has a
9 lighted access, and so there is a bar code on your badge.

10 JUDGE WEDEKIND: Oh, okay.

11 THE WITNESS: And so, when it does, it will come up
12 somewhere in a master frame computer that says, I, Theresa
13 Stewart, am allowed access into that pharmacy.

14 JUDGE WEDEKIND: Yes.

15 THE WITNESS: And so when I go into the pharmacy, now you
16 know I'm in there. And they know when the door opens and when
17 the door closes. So it's the same for any corridor door, any
18 office that you might or might not have access to.

19 You must have it to get into your break room, so that you
20 couldn't come into my break room in my off time unless, you
21 know, you had access. So you're doing this multiple times.
22 You can't get supplies out of a dispensary, it looks kind of
23 like a candy bar machine; but you can't even open the door
24 without having your identification badge.

25 JUDGE WEDEKIND: All right. Thank you.

1 THE WITNESS: Yeah.

2 MS. PARKER: Sorry.

3 Q BY MS. PARKER: All right. So the uniform requirement
4 that you just described, was that the uniform requirement in
5 effect at the hospital during the entire time that you worked
6 at the hospital?

7 A No.

8 Q Okay. And was there a change then at some point, the
9 uniform requirement?

10 A The fall of 2014 is when it changed.

11 Q All right. And prior to that change, could you just
12 describe generally what the uniform requirement was?

13 A The uniform requirement was that you wore a clean,
14 professionally attired uniform. If your uniform was a top and
15 a bottom or possibly a covered jacket over a top or a bottom,
16 it could be any color that you wanted. If pink looked good on
17 you and blue looked good on you, you wore the color that you
18 wanted. Nurses would wear colored, themed-type tops. If it
19 was Thanksgiving, you might have a top that has turkeys on it;
20 if you worked in pedes you might have Bugs Bunny or Mickey
21 Mouse on your uniform top.

22 Q Okay. And under this prior uniform policy that you just
23 described, did the Employer also require that identification
24 badges be worn?

25 A Yes.

1 Q All right. And how was it that employees or registered
2 nurses affixed those identification badges to their uniform?

3 A Currently or through the years?

4 Q Prior. I'm talking about the prior uniform policy.

5 A Through the years, it was -- life was simpler, even 15
6 years ago. So you might have had a clip that went like this in
7 the old days, and it was there simply to identify and hold the
8 badge in place so that you could look at the picture that was
9 on it and say, oh, yeah, that matches, okay.

10 Then your badge became a tool. You had to use it for
11 everything. Nurses began to wear lanyards, and we would wear
12 colored lanyards, beaded lanyards, we would wear lanyards that
13 looked like shoe strings. But we soon discovered that while
14 that gave us access to moving the badge for a tool, it also
15 created the potential to become something that would
16 contaminate a work area. So a badge that might fall into a
17 place when you're setting up a sterile field would become a
18 patient safety issue. So nurses went to badge reels.

19 Q Okay.

20 JUDGE WEDEKIND: Maybe you said this already, but pedes is
21 pediatrics?

22 THE WITNESS: Pedes is pediatrics, yeah. Kids, for
23 uniform tops, if you're wearing Mickey Mouse, they love you. I
24 mean, come in there -- Scooby Doo is a big fan too. They like
25 that one.

1 And it's very comforting, because kids are in a foreign
2 place, and it's somebody they know. In fact -- and I have
3 grandkids. But there's a new one that I haven't seen anybody
4 wear of scrub top because we're not in that environment
5 anymore, but Peppa the Pig is really the hot thing for little
6 kids, and I know at Torrance Memorial, they have -- Peppa the
7 Pig is huge.

8 MS. PARKER: She is pretty popular at my house, so.

9 THE WITNESS: So -- she's big. She's got her own show,
10 so. Yeah.

11 MS. PARKER: Yes.

12 Q BY MS. PARKER: All right. So prior to the fall of 2014
13 when there was this uniform change, were there any requirements
14 as to what the lanyards that the nurses wore should look like?

15 A No.

16 Q Okay. And what about the badge reel holders? Were there
17 any requirements as to what they should look like?

18 A None at all.

19 Q Did you typically wear a badge reel holder prior to the
20 uniform change?

21 A Yes.

22 Q Okay. And what type of badge reel holder did you wear?

23 A I wore a red, circular badge holder that if you look
24 closely at it has a symbol that looks like an EKG rhythm, and
25 it says CNA on it. And it retracts and extends easily.

1 Q Okay.

2 MS. PARKER: Could we show the witness a copy of GC-10,
3 please?

4 Q BY MS. PARKER: Can you take a look at GC-10.

5 A That would be it.

6 Q Is that a representative image of the badge reel holder
7 that you just described --

8 A Yes.

9 Q -- that you wore? Okay.

10 MS. PARKER: And can the witness be shown General
11 Counsel's Exhibit 8.

12 Q BY MS. PARKER: Could you describe the image in this
13 photo?

14 A This was a badge that was issued to nurses with new
15 uniforms in the fall or early part of 2015. It came in the box
16 that was delivered to their home.

17 Q Okay. In the box --

18 A That contained the uniforms that were shipped to our home.

19 Q I see. All right. So were you actually given one of
20 those -- the badge reel holder that's represented in GC-8?

21 A Yes.

22 Q And when did you receive it?

23 A Sometime in January of 2015.

24 Q And at that time that you received that badge reel holder,
25 were you instructed to wear it?

1 A No. It was in the box, and it was offered as recommended
2 to be worn.

3 Q And what do you mean by that?

4 A I'm assuming if you needed a badge holder, you could use
5 it. But I already had a badge holder.

6 Q All right. Did you ever wear the badge holder that's
7 represented in GC-8?

8 A I did.

9 Q Okay. And how long did you wear it?

10 A Not a full shift.

11 Q And why not?

12 A It fell apart.

13 Q Okay. And after it fell apart, what did you do?

14 A I taped it into a --

15 Q Oh, well, I'm referring to --

16 A I went back to wearing my regular old badge. It's
17 functioned very nicely for many years.

18 Q Okay.

19 A The one that he just showed me.

20 Q All right. So were you ever asked by any manager or
21 supervisor at the hospital to remove the CNA badge holder that
22 we just reviewed a picture of in GC-10?

23 A Yes.

24 Q And who was it that asked you to remove that badge holder?

25 A Robin Johnson. She is an AUM for the outpatient surgery

1 services.

2 Q And what does AUM stand for?

3 A Assistant unit manager.

4 Q When did this occur?

5 A October the 7th of 2014.

6 Q Where did it occur?

7 A In the area where I work.

8 Q And just to clarify, it happened in October 7th, 2014,

9 or --

10 A 2014. 2000 -- when did we get our uniforms. In January
11 of '15, I retired in '16. So in '14.

12 Q So in --

13 A I know it was the day after my daughter's birthday, so I
14 know it was October the 7th.

15 JUDGE WEDEKIND: I think she's focusing on the year.

16 THE WITNESS: Oh.

17 MS. PARKER: Yeah.

18 Q BY MS. PARKER: So the new uniforms were issued --

19 A Yes.

20 Q -- in 2015. And as you've testified, the first badge
21 holder you received broke --

22 A Oh, I'm sorry. Then it would have been '15, yes.

23 Q All right. I just wanted to clarify that. So could you
24 describe what happened that day with respect to your assistant
25 unit manager, Robin Johnson.

1 A I work in an area where patients are fragile. When they
2 come in, they are emotionally, spiritually, physically
3 vulnerable and fragile. And the area for women's patients is
4 sequestered from the rest of the surgery population, and we do
5 that very deliberately so that they are protected from being
6 near someone who, for example, just had a baby and they're very
7 excited and they're talking about the baby, and they're there
8 because they're going to deliver their dead fetus. That area
9 is a quiet room called women's services.

10 I was caring for a patient when in the room walked Robin
11 Johnson. And she looked at me holding a badge holder and said,
12 you need to be wearing this. And she put it down right there
13 on the work station, right by the patient.

14 The patient and the nurse have a relationship, and this
15 patient is a repeat patient. So I was not going to be lured
16 into a confrontation or do anything that would create an
17 unstable environment for the patient, so I simply looked at
18 her. She put the badge reel down and walked out of the room.

19 Q Okay. All right. So since October 2015, after you were
20 instructed to remove your badge holder, and leading up to the
21 months until your retirement, did you see other RNs, registered
22 nurses, wearing other types of badge reel holders other than
23 the one that the hospital issues to employees?

24 A Yes, I did.

25 Q Okay. And could you describe the types of badge holders

1 that you have seen employees wear?

2 A I have seen employees wear badge reels that come from
3 different programs throughout the hospital. One in particular
4 is called the I Give program. I have seen them from the ONS,
5 which is the Oncologic Nurse Society. I have seen them from
6 Care Ambulance. I have seen them as flowers, they are
7 decorated with the tops of vials; vials come with a safety cap
8 that we flip off that maintains the sterility of the top.

9 And those little vial covers can create petals and stamens
10 and look like little daisies. So a lot of times the nursing
11 students will glue them on and those become badge holders as
12 well. I have seen -- I've seen all kinds of things for badges.

13 Q Okay. And Care Ambulance you mentioned as one of these
14 companies that appears on badge holders.

15 A Yeah.

16 Q What is Care Ambulance?

17 A Care Ambulance is a service, something like McCormick or
18 AMR, that provides transport of patients either to the hospital
19 or from the hospital to other levels of care.

20 Q It's an ambulance service.

21 A An ambulance service.

22 Q And the hospital uses that ambulance service?

23 A Yes.

24 Q And are you aware if the hospital issues those Care
25 Ambulance badge holders?

1 A I am not aware that the hospital does.

2 Q And I think you also referenced Oncologic Nurses Society.

3 What is that?

4 A Oncologic Nurses Society is a group of nurses who
5 specialize in the treatment of cancer patients. To make the
6 analogy, it would be criminal law verses civil law. While it
7 would be medical nursing care versus oncologic nursing care.
8 And so, it is a specialty within the nursing profession.

9 Q Okay. We're going to go through a series of a few
10 different images that I'd like to show you.

11 MS. PARKER: I'd like to show the witness the exhibit
12 marked as General Counsel's 15.

13 Q BY MS. PARKER: And do you recognize the image in that
14 photograph?

15 A I do.

16 Q What is that?

17 A That's a flower badge. It's sad, I've been nursing so
18 long I can even tell you, this is probably from Versed
19 (phonetic) and this is from fentanyl on the outside.

20 Q Okay.

21 A Because they were a blue top.

22 Q And when you were referring earlier to the vials to
23 decorate --

24 A This is the tops that come -- these are safety tops that
25 appear on the top of a vial, yeah.

1 Q So have you seen employees wear this -- wearing this type
2 of badge holder -- I'm sorry. Let's back up. Have you seen
3 registered nurses wearing this type of badge holder at the
4 hospital since you -- in the time period that you were asked to
5 remove your badge holder and the time that you retired --

6 A Yes.

7 Q -- during that period? Okay.

8 MS. PARKER: I'd like to show the witness another
9 photograph that's been marked as General Counsel's 16.

10 Q BY MS. PARKER: Can you describe the image in this photo?

11 A This is a badge reel that Vascular Access Certification
12 Corporation gives. One of the things that registered nurses do
13 is we can get certified to put in what is called a PIC line.
14 It's a peripherally inserted central catheter, so it starts
15 peripheral, but the tip of it ends up in the heart. That is a
16 minor surgery procedure or an advanced bedside procedure. It
17 is from this certification company that that badge reel has
18 been issued.

19 Q Okay. And from the time that you were asked to remove
20 your CNA badge holder up until your retirement, during that
21 time period did you see any employees wearing this badge
22 holder?

23 A Yes, I did.

24 Q Okay. And in fact, did you take this photograph?

25 A Yes, I did.

1 Q Do you remember approximately when you took it?

2 A I took this after I spoke to file here about the injustice
3 of, why me. This is actually on a nurse at the time. The
4 background is navy blue, she's actually wearing it on her
5 uniform.

6 Q So you took that photograph of a registered nurse while
7 she was working?

8 A While she was wearing it, uh-huh.

9 Q Okay.

10 MS. PARKER: I'd like to show the witness an exhibit
11 that's marked as General Counsel's 17.

12 Q BY MS. PARKER: And do you recognize the image in this
13 photograph?

14 A I do.

15 Q Could you describe the two items in this photograph?

16 A Okay. The item on the top is the ONS edge, and it's from
17 the Oncologic Nurse Society, edge meaning patients who have
18 cancer would like to have a nurse who gives them the edge as an
19 oncologist would in battling their disease. This is a badge
20 holder issued from them, and this badge reel is from Care
21 Ambulance with the heart shape. And of course, numbers to call
22 if you need them.

23 Q Did you take this photograph?

24 A I did.

25 Q How did you obtain these two badge holders?

1 A The Care Ambulance I'm pretty sure was probably from one
2 of the transport people, if you need us give us a call. And
3 the ONS nurse is, I am an oncology nurse. I may not have my
4 certification anymore, but oncology nursing service was my
5 calling for a number of years.

6 Q Have you seen employees at the hospital wear either of
7 these badge holders --

8 A Yes.

9 Q -- from the time -- let me finish the question -- from the
10 time that you were asked to remove your CNA badge holder
11 leading up to your retirement?

12 A Yes.

13 MS. PARKER: I'm going to show the witness an exhibit
14 that's marked as GC's --

15 JUDGE WEDEKIND: Thank you.

16 MS. PARKER: -- 18.

17 Q BY MS. PARKER: Do you recognize the image in this
18 photograph?

19 A I do.

20 Q Did you take this photograph?

21 A I believe I did.

22 Q All right. And what is this image?

23 A This is a plain black badge holder.

24 Q And -- sorry -- but do you remember if you took it or you
25 do not?

1 A I think this is in my cell phone, so I'm pretty sure this
2 is it. Without a face, I'm --

3 Q Okay.

4 A -- they all look the same in here.

5 Q And is this image representative of a badge holder that
6 you've seen employees wear from the time that you received
7 your --

8 A That is correct.

9 Q -- were asked to remove your badge holder --

10 A That is correct.

11 Q -- up until your retirement? Just let me finish the whole
12 question first. Okay.

13 MS. PARKER: And let me show you General Counsel's
14 Exhibit 19.

15 Q BY MS. PARKER: Do you recognize the image in this
16 photograph?

17 A I do.

18 Q What is this item?

19 A This is a nurse who was wearing the I Give badge holder,
20 and I Give is Memorial's philanthropic arm in the organization
21 where employees who give to the charity of patients or programs
22 in the property that promote patient safety, wellness,
23 education, are given the I Give as indicative that they've
24 participated by making a contribution.

25 Q Okay. Did you take this photograph?

1 A I believe I did.

2 Q Okay. And do you remember approximately when you would
3 have taken that photograph?

4 A Just before Christmas, I believe.

5 Q Of what year?

6 A Of 2015.

7 Q And was this taken of an employee wearing this actual
8 badge holder --

9 A Yes.

10 Q -- at the hospital?

11 A Yes.

12 Q And just referring back to General Counsel's 19 real
13 quick, is this the proper placement of the badge holder, the
14 way that this individual's wearing it?

15 A The -- there's never a right or a wrong where you put your
16 badge. The nurse put her badge, it looks like, at the end of a
17 V-neck because that's this uniform and I'm familiar with it.
18 Uniforms are produced with a loop so that you can put the badge
19 on the left or the right. It really depends if you're left- or
20 you're right-handed and what is comfortable for you in the work
21 area. The requirement of the hospital is that the badge be
22 visible, and it must be above the waste. So it's not a right
23 or a wrong if it's on the left or right, although the uniform
24 manufacturer does come with a loop so that you can put your
25 badge --

1 Q I see. Okay.

2 JUDGE WEDEKIND: Is the loop only on one side?

3 THE WITNESS: It's only on one side. It would be nice if
4 you could order it on either side, because it really is on the
5 wrong side for right-hand dominant people.

6 Q BY MS. PARKER: All right. Now, we just went over several
7 images of different types of badge holders that you've seen at
8 the hospital. To your knowledge, have you heard of any of the
9 registered nurses wearing the badge holders that we just -- you
10 just observed or any other types of those badge holders that
11 you previously described, being asked to remove them by
12 hospital management or supervision?

13 A No.

14 Q How many registered nurses work in your department?

15 A I believe 36, at least at the time that I left.
16 Approximately 36.

17 Q Okay. And do the registered nurses in your department
18 interact with managers or supervisors on a regular basis?

19 A Yes.

20 Q How so?

21 A While I am in that sequestered room with my more fragile
22 patient population, in the general surgical area, we will do
23 anywhere from 45 to 60 surgery patients in a day. In that
24 general area, assistant unit managers or unit managers are
25 coming, and they would, say, tap you on the shoulder, when

1 you're done here, go ahead and take your break; or they're
2 reallocating resources, if you have a sick call in another
3 area, they might say, oh, Theresa, when you're done here, could
4 you go over to such-and-such area and fill in, they're very
5 busy. So you're -- if you're not in my area, you're out in the
6 general population for surgery, you are interfacing with your
7 manager multiple times throughout the day.

8 Q Okay. And the nurses that you've seen wearing the types
9 of badge holders you just described and we just looked over, do
10 they work in that general area or do they work in the secluded
11 area with you?

12 A Oh, they work in the general area.

13 Q Okay. So let's talk just for a moment about the
14 identification badges themselves. And prior to your
15 retirement, do you -- the registered -- did you see the
16 registered nurses wear any type of insignia on the
17 identification badges themselves?

18 A Yes.

19 Q Okay. Could you describe the types of insignia that you
20 saw on the identification badges that the registered nurses
21 wore?

22 A Pins; pins can be issued from the hospital, from your
23 certification agency or your certification body, from the
24 American Heart Association. It could be a pin from your
25 pediatric group, it can be a Bugs Bunny pin, it can be all

1 kinds of different things. But the badges can include anything
2 from your years of service pin, which might be on there, all
3 the way to your credentialing.

4 Q Okay. And I'm going to show you a photograph that's been
5 marked as General Counsel's Exhibit 20. Do you recognize the
6 image in that photograph?

7 A I do.

8 Q And what is that image?

9 A That is a pin similar to the pulley that indicates that
10 person who is in possession participated in the I Give brick
11 donation program at Memorial.

12 Q Okay. And do you commonly see, and up until your
13 retirement, have you commonly seen registered nurses wearing
14 these types of pins --

15 A Yes.

16 Q -- on their identification badges?

17 A Yes.

18 Q I'll show you another image that's been marked as General
19 Counsel's Exhibit 21. And could you identify -- there's
20 various objects in this picture. Could you identify -- well,
21 generally tell me what they are and then we'll briefly go
22 through each one.

23 A These are pins that have been issued either through Long
24 Beach Memorial or through a certification body for the purpose
25 of wearing on your badge. The -- if I started to describe them

1 to you starting at 12:00 --

2 Q Well, let me just ask you briefly, are these your pins?

3 A Yes.

4 Q Did you take this photograph?

5 A Yes, I did.

6 Q Okay. All right. So let's start, I guess, with that

7 Service Matters little card, and tell us what that is.

8 A Okay. If you are making the experience about the patient,
9 which it should be, and providing exceptional service and care
10 to them, they don't have a way of identifying whether or not
11 you're proficient as a registered nurse, but they know if
12 you've taken good care of them and met their needs, both basic
13 and advanced. And so, if they write or comment or call to a
14 manager, they would give you the Service Matters pin.

15 I can't really tell you what the figure is anymore, but it
16 would come and your boss would hand it to you and say, you
17 know, atta boy, good job, keep up the good work. It's all
18 about service.

19 Q Okay. And then the little RN with the wings above that.

20 A Yeah. The caduceus, that is given to you as an additional
21 pin. Some of us who were of the days of the lady and the lamp,
22 when we graduated from nursing school we'd wear our nursing
23 pin, and we would wear -- sometimes we would wear that. So in
24 early years this was given to us --

25 JUDGE WEDEKIND: By who?

1 THE WITNESS: By Memorial.

2 Q BY MS. PARKER: And all of these objects in this --

3 A No, not all of them. The one square object at 3 o'clock
4 that lays near the purple lanyard is not. That is actually my
5 CNA pin that was given to me when I first became a bargaining
6 unit member.

7 Q Okay. And above that it looks like a heart in a box.

8 A A heart in a box, nurses have heart. That was given to us
9 in nurses week, Long Beach Memorial.

10 Q Okay. And below that, the little green pin on a little --
11 looks like a foam pad.

12 A The green ANCC is that, nurses who have advanced practice,
13 whether they declare it or not, and I am an advanced practice
14 nurse, we will go and get board certification. So we
15 specialize and get a certification, meaning we have met all of
16 the credentialing requirements for that body. And that is the
17 ANCC, the American Nurses Credentialing pin that is awarded to
18 you when you meet the criteria and then can say, I'm board
19 certified.

20 Q Okay. And below that we have something, it looks like a
21 little cross and it's on a little black pad or paper of some
22 sort.

23 A That is one of the Memorial years of service pins. And I
24 honestly don't remember what year you receive them, at five,
25 10, 15. So it was either one of the three. I wasn't there for

1 the 20th.

2 Q And to the left of that I see the little gold one with a
3 red object in the middle.

4 A The gold one was given to us when we were instructors for
5 the American Heart Association. That one comes from the
6 American Heart Association that indicates you are a BCLS
7 instructor, basic cardiac life support instructor.

8 Q Did the hospital issue that pin to you?

9 A Yes.

10 Q Okay. And then going over to the far right, it looks like
11 another little cross with a blue circle around it, it's a gold,
12 circular pin?

13 A Correct. That was given also to us, that's the Memorial
14 logo, for the perfect score that we received for accreditation
15 in the home health department.

16 Q Okay. And how do these pins -- well, let me back up. Is
17 it your understanding that the hospital allows the employees to
18 affix these pins to their identification badges?

19 A Yes.

20 Q Okay. And how are they affixed to the identification
21 badge?

22 A I don't know how to -- like an earring back.

23 Q Okay.

24 A It's pinned on with a clip in the back. It is usually
25 placed in the plastic. If you look at a badge, our badge

1 holder underneath the flap actually has holes punched into it.

2 Q And then the last object I think is this, on the far right
3 there's a little purple -- looks like a purple badge reel?

4 What is that?

5 A That's correct. That is a purple badge reel that Memorial
6 issued, it is for Miller Children's, and I happen to have it
7 still in the original wrapping because I don't work in Miller
8 Children's. I don't do pediatric children's care.

9 Q When was that issued to you?

10 A Probably in 2009 or '10.

11 Q Okay.

12 MS. PARKER: Just as a housekeeping matter, I'd like to
13 offer into evidence General Counsel's Exhibits 15 through 21 at
14 this point.

15 MR. ABRAHMS: No objection.

16 MR. BERUL: No objection.

17 JUDGE WEDEKIND: Received.

18 **(General Counsel Exhibit Number 15 through 21 Received into**
19 **Evidence)**

20 JUDGE WEDEKIND: By the way, I never got 17 or 21.

21 MS. PARKER: I'm sorry.

22 JUDGE WEDEKIND: Thank you. Okay.

23 Q BY MS. PARKER: All right. Just a couple more questions,
24 and we are almost done. Okay. So I have one final -- oh.

25 MS. PARKER: So, I gave the witness a document that's been

1 marked as General Counsel's Exhibit 22.

2 Q BY MS. PARKER: And could you describe the image that's in
3 this photograph?

4 A This is a pig, and it's an unusual pig in that it is not a
5 badge holder, but it is generally affixed to a badge. And on
6 the day that Robin Johnson placed the badge holder at the work
7 station when I was administering patient care, a colleague
8 entered the room, and she offered to start the IV. And she was
9 entering as Robin was exiting. And she wears this pig on her
10 badge to come to work.

11 Q Okay. And is that the actual pig that she wears?

12 A This is not the pig -- no. She brought to me my very own
13 pig so I would have less difficulty in describing it.

14 Q Okay. So I'm going to let you describe it on the record.
15 I can help you if it makes sense, just to show how it works.

16 MS. PARKER: And let the record reflect I'm showing the
17 witness a little plastic pig with a key chain hanging that is
18 about two inches in length, about a half an inch in width. It
19 has a little switch at the top of its head. And I'll let the
20 witness explain how it works.

21 THE WITNESS: If you were a patient in -- under nursing
22 care, and nurses wanted to do neuro checks, one of the basic
23 premises of neuro checks is to check whether eyes dilate and
24 constrict. This pig is actually not just making a noise, but
25 when you turn it on -- it allows the nurse to use it as a tool.

1 And so, yes, it does make an oink when it's depressed, and the
2 lights do light up, and it serves its purpose.

3 MS. PARKER: Okay.

4 JUDGE WEDEKIND: How is it clipped on the badge?

5 THE WITNESS: There is either a hole where you could put a
6 pin, or you could slide it through here. Or you could actually
7 clip this around the top part where the metal flap goes and
8 snaps together. They can usually catch this part, because it's
9 approximately the same width as the plastic band that holds the
10 identification badge.

11 JUDGE WEDEKIND: And where was she wearing it?

12 THE WITNESS: Right on her chest with her badge and her
13 pulley.

14 JUDGE WEDEKIND: At the top of the badge?

15 THE WITNESS: At the top of the badge.

16 JUDGE WEDEKIND: Okay.

17 Q BY MS. PARKER: And you mentioned that you saw her wearing
18 it the same day that you were asked --

19 A The very same day. The very same almost moment, within
20 moments.

21 Q Okay. And following the incident in October, did you see
22 this particular employee continue to wear --

23 A Yes.

24 Q -- that pig key chain up until your retirement?

25 A Yes.

1 Q Did she wear it on a daily basis?

2 A Every day.

3 Q Did you ever see her wear any other different types of
4 badge holders?

5 A Yes. She is --

6 Q What types of badge holders would she wear?

7 A She is, without her face being recognized, is wearing the
8 flower badge that is in one of the prior exhibits.

9 Q I see.

10 A I'm not sure what number it is.

11 Q You're referring to the one with the --

12 A With the vial tops --

13 Q -- plastic vials?

14 A -- correct, around it.

15 MS. PARKER: Could I have the witness see General
16 Counsel's Exhibit 15? Or I could show it to her as well.

17 Q BY MS. PARKER: Is that representative of the one that she
18 was wearing?

19 A That is correct.

20 Q She was wearing it that day --

21 A Yes.

22 Q -- as well that you received your advisement from
23 Ms. Johnson to remove your CNA badge holder?

24 A That is correct.

25 Q Okay.

1 MS. PARKER: I have no further questions for this witness.

2 JUDGE WEDEKIND: Charging Party?

3 MR. BERUL: No, I do not.

4 JUDGE WEDEKIND: Okay. Cross?

5 MR. ABRAHMS: Yeah. I'll ask for the Jencks statements,
6 and then ask for a recess.

7 JUDGE WEDEKIND: Okay.

8 MS. PARKER: Again, I'm giving you the original and a copy
9 because the photographs came out poorly in the copy.

10 JUDGE WEDEKIND: Okay. Off the record, five, 10 minutes.
11 (Off the record at 5:34 p.m.)

12 JUDGE WEDEKIND: Okay. Let's go back on the record.
13 Cross?

14 MR. ABRAHMS: Yes, thank you.

15 MS. PARKER: And can we just do one housekeeping matter?

16 JUDGE WEDEKIND: Oh, sure.

17 MS. PARKER: I think I forgot to offer 22 into evidence.

18 JUDGE WEDEKIND: Yes. Any objection? That's the pig.

19 MR. ABRAHMS: No objection.

20 JUDGE WEDEKIND: Okay. Received.

21 **(General Counsel Exhibit Number 22 Received into Evidence)**

22 MR. BERUL: No objection.

23 **CROSS-EXAMINATION**

24 Q BY MR. ABRAHMS: Good afternoon, Ms. Stewart.

25 A Good afternoon.

1 Q I don't think I'll have that many questions for you,
2 but --

3 MR. ABRAHMS: If we could hand the witness GC Exhibit 6.

4 Q BY MR. ABRAHMS: And I'll ask you to -- this is the, what
5 we're calling for the purposes of this, the appearance policy
6 that contains the badge reel requirements. Were you involved
7 in any -- well, strike that.

8 You've been at the hospital for some time, and you
9 described the -- there's a lot of flexibility provided to what
10 the uniforms and appearances could be, you could wear different
11 color tops or bottoms, kind of whatever you felt like you
12 wanted to wear; is that right?

13 A As long as it was a professional attire, yes.

14 Q And for professional attire for nurses it had to be
15 scrubs, correct?

16 A I guess.

17 Q Okay. So -- yet, you could wear whatever type of scrub
18 you wanted and whatever color you happened to like.

19 A Yes.

20 Q And then that obviously changed, and most direct-care
21 patient RNs had to wear the dark blue that you referred to?

22 A That's correct.

23 Q Okay. And this was -- fair to say this was a fairly big
24 change at the hospital?

25 A Yes.

1 Q And with it came a new requirement called bare below the
2 elbows; is that right?

3 A Yes, that's correct.

4 Q Okay. And that was also a big change.

5 A That was a change that also was not evidence-based.

6 Q Okay. Well, I don't want to debate whether it was --
7 that's your opinion. But it was --

8 A No, it's not my opinion. I'm not an epidemiologist, but
9 Memorial adheres to something called evidence-based practice --

10 JUDGE WEDEKIND: Can I just interrupt you for a second?
11 He's the lawyer, he's entitled to ask the questions.

12 THE WITNESS: Oh, sorry. That's not an answer?

13 JUDGE WEDEKIND: Just answer his questions.

14 THE WITNESS: Okay. It was a big change.

15 Q BY MR. ABRAHMS: Was it a big change? Yes?

16 A Yes.

17 Q Okay. And I think you had said -- well, even before -- I
18 mean, you made a statement that before 2014, RNs would wear
19 lanyards to hold their badge.

20 A Correct.

21 Q Okay. And then you said that RNs started to go to badge
22 reels because of contamination or infection concerns.

23 A I believe I said it was as the badge evolved as a tool.
24 So it was no longer just an identification, it became a key.

25 Q And that's when they started wearing lanyards.

1 A No. That is when they started wearing reels.

2 Q I see. But there were -- correct me if I'm wrong, I
3 thought you had testified that there was also a contamination
4 aspect to being able to use a reel as opposed to a lanyard,
5 which might hang down.

6 A A lanyard would hang down, and could contaminate a work
7 area.

8 Q Okay. And so even prior to this uniform change, you
9 personally had moved to a lanyard.

10 A Correct.

11 Q I'm sorry, strike that. From a lanyard to a badge reel.

12 A Reel, yes.

13 Q Okay. And was that because of your -- why did you do
14 that?

15 A When you open a door and the light source that reads the
16 strip on your badge either requires you to go like this and
17 hurt you neck, because you're doing this 10, 20, 30 times in a
18 day, versus a direct pull. A pull reel gives you arm's length
19 in the cord that retracts automatically. So I'm not using bad
20 body mechanics, and it's much more convenient as a tool.

21 Q Okay. So is that the reason why you switched from a
22 lanyard to a badge reel?

23 A Yes.

24 Q Okay. Do you -- were you aware of nurses that also --
25 that may have switched because of the contamination concern?

1 A For some nurses it's not an issue if you're not setting up
2 sterile fields. If you're working in an area where that is not
3 part of your routine job duties, then a lanyard is certainly
4 sufficient. It would be no different than a press badge, they
5 wear theirs on a lanyard. But if you're in a high-level area
6 where the risk of contamination occurs in your day-to-day
7 duties, a professional will look at that and say maybe a badge
8 reel is better than a lanyard.

9 Q Okay. So it's your belief that that's -- some nurses
10 gravitated towards badge reels even before this policy for that
11 reason?

12 A Yes.

13 Q Okay. Now -- and were you aware that as part of the
14 transition in 2014 to the new uniform and appearance policy,
15 that lanyards were then prohibited?

16 A I don't believe that I knew for a fact that lanyards were
17 prohibited. Lanyards are still worn at Memorial today.

18 Q Okay. So you did not know that that was part of the
19 policy?

20 A No.

21 Q Okay. Did you know -- you also stated that, with
22 reference to GC Exhibit 19 and 18, and I'll show them to you if
23 you'd like, but the placement of the badge reel on those two
24 pictures has RNs putting them at the V-neck of their scrub.

25 A Uh-huh.

1 Q Is that a yes?

2 A Yes, I see that.

3 Q Okay. And you stated that it's your understanding from
4 the rule that, as long as it was above the waste it was
5 sufficient?

6 A That is correct.

7 Q Okay. You also referenced a little -- you said there was
8 a little fabric holder that was on the right side of the new
9 uniforms?

10 A Correct.

11 Q Okay. That didn't exist -- that's not a standard
12 something that's on all scrubs that you would just go get from
13 a uniform store, right?

14 A I don't believe so.

15 Q Okay. And so that was something that was somewhat unique
16 to the Memorial Care uniform?

17 A I would suppose, yeah.

18 Q Okay. So I'll direct your attention real quick to looking
19 at the policy I had him show you to number 12, which appears on
20 page 3. Okay. So were you aware, prior to your retirement --
21 or actually, let's go prior to -- when did you say -- your
22 discussion with your AUM occurred in October of 2015?

23 A That's correct.

24 Q Okay. So prior to October 2015, were you aware of this
25 requirement of this policy that badges must be worn at collar

1 level, right side, so they can readily be seen?

2 A No.

3 Q Okay.

4 MR. ABRAHMS: One moment.

5 Q BY MR. ABRAHMS: Okay. So I'm going to hand you your
6 affidavit that you provided the Region in this case. It's the
7 original. And I'm just going to direct your attention to page
8 3, line six, where it says -- I'm sorry, line five. The
9 uniform also had a spot on the uniform to clip on our badge
10 holder. With this new policy we were required to wear badges
11 on the, it says left, but it's struck through and the
12 word "right" is handwritten next to it, right side of our chest
13 on the designated place on the uniform for the holder. Do you
14 see that?

15 A Yes.

16 Q Okay. Is that your initials?

17 A Yes, it is.

18 Q Okay. So does that refresh your memory that you
19 understood that the badge was supposed to be displayed, by the
20 policy, on the right side where it's indicated on the uniform?

21 A Yes and no.

22 Q What do you mean by that?

23 A Yes, I understand the badge is to be clipped. However, if
24 you're referring to a collar statement, our policy for uniforms
25 always was that it was above the waste. If this change

1 occurred in this policy that made it as specific as to it must
2 be on the fabric tag, this was not made public through my
3 department.

4 Q Wait -- in this affidavit, you're stating that with the
5 new policy you were required to wear badges on the right side
6 of your chest on the designated place on the uniform for the
7 holder.

8 A That is correct.

9 Q So at that time you understood that that's what the policy
10 was requiring, was that you put it on the right side where that
11 holder is.

12 A Yes.

13 Q Okay. So going back to those two photos of the RNs where
14 they have their badge reels clipped to the V-neck of their
15 shirt, that would also not comply with this policy?

16 A It's determined by your collar. I believe, and I would
17 have to refresh myself, are they both not wearing V-necks?

18 Q Well, you can look at the photos. They are wearing
19 V-necks, but I'm just trying to understand. Your affidavit
20 here is saying it was your understanding at least when you
21 signed this --

22 A That's why I said yes and no. Because it's yes on the --
23 yes, I understand you can wear your badge on the collar.

24 Q Right.

25 A On the right side.

1 Q Where the --

2 A Epaulet is.

3 Q Okay. And so, you understood that was the policy. These
4 two individuals in the picture who had a badge displayed on the
5 V-neck, that would not be in accordance with your understanding
6 of the policy, at least when you signed this affidavit.

7 A I'm not sure how to answer that question. And the reason
8 I am not sure is, a collar for a nurse's uniform, if it is a
9 V-neck, starts back here and ends right here. We don't have
10 lapel collars as you gentleman do with suits, or I do with my
11 suit. If you're looking at a scrub, the scrub, I can tell,
12 goes this way, and the -- criss-crosses all the way down to
13 here. So this is technically considered their collar.

14 Q Right. Well, what you wrote in this affidavit was not
15 anything about a collar. It says, right side of our chest.

16 A That is correct.

17 Q Okay. So that would be the right side of the chest --

18 A That is correct.

19 Q -- on the designated place on the uniform for the holder?

20 A That's correct.

21 Q So is that referring to -- the designated place on the
22 uniform for the holder is a little piece of fabric we
23 discussed?

24 A Correct.

25 Q Okay. So all I'm trying to clarify is the two pictures in

1 GC Exhibits 19 and 18, those are not the designated place on
2 the collar --

3 A That is correct.

4 Q Okay. When you took these photos, do you remember if
5 that's how they were walking around all day, or did they
6 manipulate that and put them there for you to take a picture
7 without getting their face?

8 A I took them there because I noticed their location and
9 what they were in substance, whether it was I Give or a flower.

10 Q Okay.

11 JUDGE WEDEKIND: Did you ever wear a V-neck?

12 THE WITNESS: I generally don't.

13 JUDGE WEDEKIND: But did you ever?

14 THE WITNESS: When I wasn't so chubby and well-endowed,
15 yes, I did. But not recently.

16 JUDGE WEDEKIND: No, no, I mean the V-neck uniform.

17 THE WITNESS: Not recently, no.

18 JUDGE WEDEKIND: All right.

19 Q BY MR. ABRAHMS: Well, let's clear it up for the record.
20 You did say that -- so nurses were provided an optional --
21 various different styles of scrubs as part of the uniform
22 option.

23 A Yes.

24 Q Now, they would all be the same color, and they all
25 said -- they all had the same Memorial Care logo, they all said

1 RN in the same place on the left side, correct?

2 A That is correct.

3 Q And so the choice that the nurse would have is basically
4 in slight variations of cut, including the collar?

5 A That is correct.

6 Q Okay. And so, some nurses chose, as the ones displayed,
7 to have a V-neck collar, and then there's more rounded collars.

8 A Correct.

9 JUDGE WEDEKIND: But as far as you know -- well, if you
10 know, did all uniforms, regardless of their particular style,
11 have that little label or lapel or whatever it was called that
12 you could hook the --

13 THE WITNESS: I am not certain. I know the ones that I
14 purchased all had that.

15 JUDGE WEDEKIND: Okay.

16 THE WITNESS: I can only speak for my own.

17 JUDGE WEDEKIND: Okay.

18 Q BY MR. ABRAHMS: Now, you said that you got a box shipped
19 to your house that had your uniforms in it?

20 A Yes.

21 Q Okay. And how did you order your uniforms? How did you
22 go about ordering uniforms?

23 A A manager came and tapped you on the back and said, okay,
24 it's your turn. I want you to go to Houssels Forum or wherever
25 it went. We went into a large room that was occupied by three

1 tents. The tents were enclosed on all four sides and the top,
2 had a slit in the center.

3 And you went in there with 20 or 30 of your colleagues and
4 tried on uniforms in the style and size you thought would be
5 becoming to your body. It was a very humbling experience if
6 you are an old girl, and you really don't want to share your
7 undergarments with your colleagues, nor your body and battle
8 scars. So once you determine the style and the size that was
9 appropriate for you, then you placed your order online using a
10 stipend number that was given to you by Memorial, and waited
11 for them to ship.

12 Q Okay. So did you do that part, the online ordering? Was
13 that done in Houssels Forum at that same location or did you do
14 that separately?

15 A It depends on how much time you took to try on uniforms
16 and find a style. If there was time and computer access
17 available, which was limited, you could do it in Houssels
18 Forum. I actually had to go to a place over in Children's,
19 which I don't remember what that conference room was called.
20 There was one computer, three tents, 130 nurses, and an
21 inability to place your order at that time, partially because
22 if your order exceeded the stipend that was allowed you would
23 have a credit card to pick up the balance, and many nurses
24 don't carry credit cards into the work area.

25 Q Okay. So was there, if you weren't able to do it at the

1 computer there, were you able to do it at the computer at the
2 work station?

3 A You had to do it back in your home, yes, your home
4 department.

5 Q Okay. Do you know whether or not you also had access to
6 that from outside of the hospital, or did you have to be in the
7 hospital?

8 A I couldn't answer that, I don't access from home.

9 Q Okay. So if you were at least at the hospital, you would
10 go -- is there a page on the Internet for uniforms?

11 A Yes.

12 Q And it would facilitate you ordering your uniforms?

13 A Yes.

14 Q And do you recall whether there was an option for badge
15 reels or anything like that?

16 A I don't recall any option for badge reels.

17 Q Okay. Do you recall whether that same section had the --
18 of the Internet had the actual policies that were applicable to
19 direct-patient care providers on that same spot on the
20 Internet?

21 A I do not.

22 Q Okay. Okay. And then, so at some point, some weeks
23 later, you get your uniform?

24 A Correct.

25 Q And you wore your badge reel one day and then it broke?

1 A Not even one day, but yes.

2 Q I'm going to show you something that -- I'll hand this to
3 you. We'll eventually get something into evidence on this.

4 But I'm handing you a badge reel. Is that -- it is roughly
5 two inches in diameter, maybe an inch and a half, two inches.

6 And it's got a silver backing with a black plastic rim, and
7 then a white and blue Memorial Care logo. Is this the first
8 badge reel that you had?

9 A No.

10 Q You did not receive this badge reel?

11 A No, I did not.

12 Q Okay. Do you know whether some RNs received this badge
13 reel first?

14 A I don't know.

15 Q Okay. Do you know whether or not there were multiple
16 versions of badge reels that were distributed with the Memorial
17 Care logo during 2015?

18 A Yes. Mine doesn't look like this at all.

19 Q Yours looks like the picture that was shown to you. Maybe
20 it wasn't shown to you.

21 JUDGE WEDEKIND: Number 8?

22 MR. ABRAHMS: GC Exhibit 8?

23 THE WITNESS: Is it the white one?

24 MR. ABRAHMS: I'll hand it to you.

25 THE WITNESS: Yes. That is my badge reel.

1 Q BY MR. ABRAHMS: Okay. Do you know whether or not there
2 was other complaints about the badge reels breaking?

3 A Yes.

4 Q Okay. And do you know whether or not there was anything
5 done about those complaints?

6 A I'm not in management, so I can't answer that.

7 Q Okay. But you do recall that there was -- it wasn't just
8 isolated to you in terms of the badge reels breaking?

9 A No.

10 Q Okay. When -- first of all, how many AUMs did you work
11 with during October of 2015?

12 A Two.

13 Q Okay. So you had two different AUMs?

14 A Yes.

15 Q Okay.

16 A They co-share in that position.

17 Q Okay. There's Robin, and then who was the other person?

18 A Maria Rojas.

19 Q Okay. And up until the date, October 7th, 2015, nobody
20 had said anything to you about your badge reel?

21 A No.

22 Q And on that date, Robin approached you and handed you a
23 Memorial Care badge reel?

24 A That's correct.

25 Q Okay. And she said -- I think your testimony was she said

1 you need to be wearing this?

2 A Yes.

3 Q Did she say anything else?

4 A No.

5 Q Okay. Did she make any comments about your badge reel
6 being a Union badge reel?

7 A No.

8 Q Did she say anything about the Union at all?

9 A Because I'm with a patient, I didn't engage.

10 Q Okay.

11 A So there was no conversation from her part or my part
12 after her statement.

13 Q Okay. And did she stand there and wait for you to take
14 off your CNA badge reel and put on the uniform one?

15 A No, she did not.

16 Q Okay. Did you see whether or not she was holding other
17 badge reels at that time?

18 A No, I did not.

19 Q The -- hand the witness GC Exhibit 22, please. This is
20 the, for lack of a better term, a pig flashlight.

21 A Yes.

22 Q Do you know whether or not the individual who had this
23 light regularly put it on the backside, underneath their badge?

24 A No.

25 Q You don't know or?

1 A It was visible.

2 Q Okay. It was visible, but was it underneath the badge or
3 in front of the badge, so you couldn't see her face?

4 A To the side. If this is hanging, it will only hang to the
5 side of the badge. It's hanging, as I told the Judge, around
6 the plastic tab.

7 Q Okay. Did Ms. Johnson ever say anything to you again
8 about your badge?

9 A No. She did come in to inspect my chest, though.

10 MR. ABRAHMS: Okay. I'll move to strike that as non-
11 responsive.

12 JUDGE WEDEKIND: I'm not going to strike it. I'm not
13 going to strike it. I may follow-up on it.

14 MR. ABRAHMS: I have no further questions.

15 JUDGE WEDEKIND: I don't know if you testified, did you
16 change your badge holder or your badge reel after that?

17 THE WITNESS: I did.

18 JUDGE WEDEKIND: Okay.

19 THE WITNESS: I put on the next one that she gave me and
20 that broke, so I actually took that white badge reel and
21 replaced it with my red CNA, so I had a tool to do this, but to
22 remain compliant I took the white badge reel and put it in --
23 in healthcare, we have these tiny little Ziploc bags that
24 contain medication. I put all the pieces that fell apart in
25 there and taped it to my badge, so I would be compliant wearing

1 their pulley, even though it didn't serve a function and
2 breaks.

3 So she came, days later to check my chest to see if I had
4 complied, and I was compliant. I'm wearing their badge.

5 JUDGE WEDEKIND: But you were wearing both badges?

6 THE WITNESS: I'm wearing both badges.

7 JUDGE WEDEKIND: Okay. Thank you. Any redirect.

8 MS. PARKER: A couple minutes. Yeah, can we just have a
9 couple minutes just to --

10 JUDGE WEDEKIND: All right. Off the record.

11 (Off the record at 6:15 p.m.)

12 JUDGE WEDEKIND: Okay.

13 MS. PARKER: No redirect from General Counsel.

14 MR. BERUL: None from the Union.

15 JUDGE WEDEKIND: Okay. Any follow-up?

16 MR. ABRAHMS: No follow-up.

17 JUDGE WEDEKIND: Okay. Thank you very much, Ms. Stewart.
18 Thanks for your testimony.

19 THE WITNESS: Thank you.

20 JUDGE WEDEKIND: Thanks for waiting all that time.

21 THE WITNESS: No problem.

22 JUDGE WEDEKIND: Please don't discuss your testimony with
23 any other witness until the proceeding is over. Okay. Are we
24 done for the day? Okay, 9 a.m. tomorrow.

25 MS. PARKER: We have that one witness who will be very --

1 should be very brief.

2 JUDGE WEDEKIND: Brief at 9 a.m. Okay. See you then.

3 Off the record.

4 (Whereupon, the hearing in the above-entitled matter was

5 recessed at 6:17 p.m. until Tuesday, May 24, 2016 at 9:00 a.m.)

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C E R T I F I C A T I O N

2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 21, Case Number
4 21-CA-157007, Long Beach Memorial Medical Center Inc. D/B/A
5 Long Beach Memorial Medical Center & Miller Children's and
6 Women's Long Beach and California Nurses Association/National
7 Nurses United (CNA/NNU) at the National Labor Relations Board,
8 Region 21, 888 South Figueroa Street, Los Angeles, California
9 90017, on Monday, May 23, 2016, at 1:13 p.m. was held according
10 to the record, and that this is the original, complete, and
11 true and accurate transcript that has been compared to the
12 reporting or recording, accomplished at the hearing, that the
13 exhibit files have been checked for completeness and no
14 exhibits received in evidence or in the rejected exhibit files
15 are missing.

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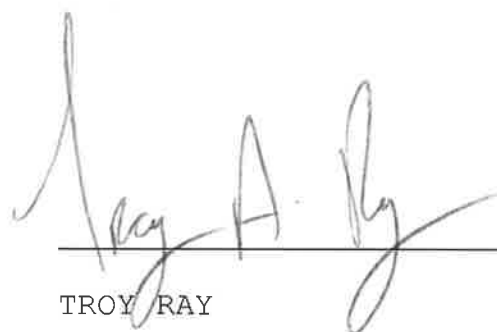
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TROY RAY

Official Reporter

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 21

In the Matter of:

Long Beach Memorial Medical
Center Inc. D/B/A Long Beach
Memorial Medical Center &
Miller Children's and Women's
Hospital Long Beach,

Case No. 21-CA-157007

and

California Nurses
Association/National Nurses
United (CNA/NNU).

Place: Los Angeles, California

Dates: May 24, 2016

Pages: 155 through 336

Volume: 2

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AVTranz

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Phoenix, AZ 85020
(602) 263-0885

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

In the Matter of:

LONG BEACH MEMORIAL MEDICAL
CENTER INC. D/B/A LONG BEACH
MEDICAL CENTER & MILLER
CHILDREN'S AND WOMEN'S
HOSPITAL LONG BEACH,

and

CALIFORNIA NURSES
ASSOCIATION/NATIONAL NURSES
UNITED (CNA/NNU).

Case No. 21-CA-157007

The above-entitled matter came on for hearing, pursuant to notice, before **JEFFREY WEDEKIND**, Administrative Law Judge, at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Los Angeles, California 90017, on **Tuesday, May 24, 2016, at 9:05 a.m.**

A P P E A R A N C E S**On behalf of the General Counsel:****LINDSAY R. PARKER, ESQ.****MOLLY KAGEL, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 21
888 S. Figueroa Street, 9th Floor
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Tel. 213-894-5449
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On behalf of the Charging Party:**MICAH BERUL, ESQ.**

NATIONAL NURSES ORGANIZING COMMITTEE (NNOC)
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Tel. 310-557-9559
Fax. 310-557-9573

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Elizabeth Castillo	159	166	174 177	177	
Judith Fix	183	265 269	274		
Robin Johnson	278	288			
Colleen Coonan	290				
Cinthya Rocha	312	329			

E X H I B I T S**EXHIBIT****IDENTIFIED****IN EVIDENCE****General Counsel:**

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E-16	333 (Rejected)	333
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E-17	333 (Rejected)	333
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P R O C E E D I N G S

2

JUDGE WEDEKIND: On the record. All right. This is the

3

second day of hearing in Long Beach Memorial Medical Center.

4

General Counsel, are you ready to call your next witness?

5

MS. PARKER: Yes, Your Honor. Mrs. Elizabeth Castillo.

6

JUDGE WEDEKIND: Good morning, Ms. Castillo.

7

MS. CASTILLO: Good morning.

8

JUDGE WEDEKIND: If you would raise your right hand for

9

me?

10

Whereupon,

11

ELIZABETH CASTILLO

12

having been duly sworn, was called as a witness herein and was

13

examined and testified as follows:

14

JUDGE WEDEKIND: Please state your full name and spell it

15

for us?

16

THE WITNESS: My name is Elizabeth Concepcion Castillo,

17

that's E-L-I-Z-A-B-E-T-H C-O-N-C-E-P-C-I-O-N C-A-S-T-I-L-L-O.

18

JUDGE WEDEKIND: Thank you.

19

DIRECT EXAMINATION

20

Q BY MS. KAGEL: Good morning, Ms. Castillo.

21

A Good morning.

22

Q Thank you for coming in. Let's start with some

23

background. Where are you employed?

24

A At Long Beach Memorial.

25

Q And how long have you worked for Long Beach?

1 A Eight years.

2 Q Okay. And what's your current job title?

3 A I'm a registered nurse.

4 JUDGE WEDEKIND: You don't really need to lean forward.

5 THE WITNESS: Okay.

6 JUDGE WEDEKIND: Just keep your voice up --

7 THE WITNESS: Okay.

8 JUDGE WEDEKIND: -- and you'll be fine.

9 Q BY MS. KAGEL: And which department do you work for?

10 A I work on the 5th floor, Diabetes Medical Surgical Unit.

11 Q And, briefly, could you describe your duties as an RN in
12 that department?

13 A My duties are to care for four to five patients. I do a
14 head to toe assessment, medications, carry out doctors orders,
15 look at labs, if there's an issue with the patient I call the
16 doctor.

17 Q And are you represented by a Union?

18 A Yes, California Nurses Association.

19 Q Okay. Do you hold any positions with the Union?

20 A I'm a Union rep.

21 Q And how long have you been doing that?

22 A I would say probably about two years now.

23 Q I'm quickly going to spend some time talking about the
24 hospital's uniform requirements. Does the hospital require
25 that RN's in your department wear a specific uniform?

1 A Yes.

2 Q And could you describe those requirements?

3 A We're required to wear -- they're navy blue uniform
4 scrubs, dark colored shoes, we're not allowed to wear bright
5 colored shoes anymore, our hair is supposed to be up, back --
6 pulled back if it's long, off the shoulders, jewelry needs to
7 be -- nothing like big hoops, very small like studs, close to
8 the ears.

9 Q Are you required to wear an identification badge?

10 A Yes. The Memorial reel.

11 Q Okay. So that's the badge and then you're also supposed
12 to wear the Memorial badge reel?

13 A Badge reel, yes.

14 Q Has this always been the uniform requirement in effect at
15 the hospital?

16 A No.

17 Q When did these new requirements come into effect?

18 A I would say now, maybe the last year and a half, maybe
19 going on two years.

20 Q And talk about the badge reel holders for a minute. I'm
21 going to refer you to General Counsel Exhibit Number 8, General
22 Counsel 8. Is this the badge reel holder you're required to
23 wear?

24 A Yes.

25 Q Now, since the new uniform policy was implemented, have

1 you seen other RNs wear any types of badge reel holders other
2 than the one depicted in GC Exhibit 8?

3 A Yes, I have.

4 Q All right. Could you describe some of those?

5 A Some of them I've seen with studs, like rhinestones
6 covered, some I've seen where it says PACU, it's not Memorial's
7 reel, it just says PACU on it, some I've seen nothing, it's
8 just a clear reel, I've seen some people put stickers to cover
9 it, like cartoon stickers. I've seen a lot of nurses wearing
10 one a lot of nurses wearing one legacy.

11 Q Okay. Do you know what PACU stands for?

12 A I do, but I can't think of it right now, sorry.

13 Q That's okay. Do you know if it's affiliated -- is it a
14 company?

15 A No, it's one of the units in our hospital.

16 Q Okay. And these stickers that you said -- are they --
17 where are they? Covering the insignia? The Memorial insignia?

18 A Yeah, they're covering like -- like right in the middle.

19 Q And, briefly, what is -- do you know what one legacy is?

20 A It's an organ donation organization.

21 Q All right. Is it affiliated with the hospital?

22 A They do have a connection with the hospital. If we have
23 patients that die, then we call them if a patient wanted to
24 donate their organs, tissues or corneas.

25 Q Okay. And where in the hospital have you seen RNs wearing

1 the badges you just described?

2 A On my floor and then also during our skills training.

3 Q What's skills training?

4 A So that's a yearly training that we have to do just to, I
5 guess, brush up on our skills, on Tracheotomy care, how to do
6 like pumps, IV pumps and just all different types of things,
7 chest tubes.

8 Q So, is it with RNs in just your department?

9 A We also have like other staff, like PCAs -- patient care
10 assistants that come and do what's under their scope of
11 practice.

12 Q Have you -- the badge reels that you've just described,
13 have you seen these within the last six months?

14 A Yes.

15 Q Okay. I'm going to show you a photograph that we've
16 marked as General Counsel Exhibit Number 23. Could you
17 describe what this is?

18 A It's a Memorial badge reel then it's covered with
19 rhinestones, a heart, silver in the middle of the heart and
20 around it is gold and then there's a badge of the nurse -- it's
21 a nurse's badge on the bottom connected to it.

22 Q Who took this photo?

23 A I did.

24 Q Okay. Where did you take this photo?

25 A On my floor.

1 Q When?

2 A That's was May 18th of this year.

3 Q Okay. What was the conversation like with your co-worker
4 when you asked to take this photo?

5 A I saw it, I complimented on it, I thought it was really
6 cute and I asked her if I could take a picture of it and if she
7 could order one for me.

8 Q Okay. Now, if you can see from this photo -- can you see
9 what pin she has on her badge?

10 A She has a preceptor pin, it looks like a Memorial -- I'm
11 not sure what -- I forget what that is, but it's a Memorial pin
12 and then one on the far left, I'm not sure, I can't tell what
13 that is.

14 Q Okay. Now, to your knowledge, have you heard of this RN
15 or any other RNs wearing -- oh, I'm sorry, let me -- strike
16 that. Have you heard of your co-worker here being asked to
17 remove this rhinestone heart from her badge reel?

18 A No.

19 Q Have you heard of any of the RNs being asked by a
20 representative of the hospital to remove the badge reel holders
21 that you described before?

22 A No.

23 Q And how many RNs work in your department?

24 A Oh gosh, 50 or more.

25 Q Okay. And do the RNs in your department interact with

1 managers or supervisors on a regular basis?

2 A Yes.

3 Q Okay. And how so?

4 A So, our unit -- the directors come to the floor often just
5 to see how things are going, they assist the unit managers, we
6 interact with them daily, they come to the floor to make sure
7 everything's is okay. We have daily huddles, which they run
8 like around 2:00, so we see them on a regular basis.

9 Q Where are the offices of the assistant unit managers
10 located?

11 A They're in the unit near the nurse's station.

12 Q So, they're on the floor, essentially?

13 A Yes, they're on the floor.

14 Q Do you have staff meetings?

15 A We do have staff meetings, I think, once a month.

16 Q Okay.

17 MS. KAGEL: There's no further questions at this time.

18 JUDGE WEDEKIND: Attorney Berul?

19 MR. BERUL: No questions.

20 JUDGE WEDEKIND: Okay. Respondent?

21 MR. ABRAHMS: Yeah. We'd ask to see to see the statements
22 and for --

23 MS. KAGEL: Oh, yeah.

24 MR. ABRAHMS: -- a very brief recess.

25 MS. KAGEL: Just a housekeeping. General Counsel moves to

1 admit Exhibit 23 into the record.

2 JUDGE WEDEKIND: Any objection?

3 MR. BERUL: No objection.

4 MR. ABRAHMS: No objection.

5 JUDGE WEDEKIND: It's received.

6 **(General Counsel Exhibit Number 23 Received into Evidence)**

7 MS. PARKER: We're provided Respondent with the original
8 copy.

9 MR. ABRAHMS: Thank you.

10 JUDGE WEDEKIND: And let's go off the record.

11 (Off the record at 9:14 a.m.)

12 JUDGE WEDEKIND: Cross?

13 MR. ABRAHMS: Yes. Thank you.

14 **CROSS-EXAMINATION**

15 Q BY MR. ABRAHMS: Good morning, Ms. Castillo. How are you?

16 A Fine. Thank you.

17 Q Good. I want to talk about a couple of things real quick.

18 You mentioned a number of things changed with the new uniform
19 requirement last -- I guess it's been about a year and a half
20 or so ago, is that when the new uniform --

21 A I think so, around a year and a half or so.

22 Q Okay. So, there was more stringent requirements related
23 to your hair after that?

24 A Once the change went into effect, yes.

25 Q Okay. And did anybody explain to you why?

1 A I guess what was explained to us was, they wanted to keep
2 the infection rate down, bare below the elbows.

3 Q Okay. And that's when they also -- you went to a
4 standardized scrub that everybody had to wear?

5 A Yes.

6 Q Okay. And was there any explanation as to why there was a
7 standardized scrub?

8 A For the same purpose.

9 Q And the new scrubs have your license embroidered on the
10 left hand side; is that right? They say RN?

11 A Yes.

12 Q And that didn't -- scrubs didn't have that before?

13 A No.

14 Q Was there any discussion as to why that was important, to
15 have that RN embroidered on the left-hand side?

16 A I guess, so people like patients and visitors would know
17 the difference between who the RNs were and then who were the
18 other staff, PCAs, pharmacists.

19 Q Okay. And at that point you also had to start wearing a
20 badge reel or wear your badge up on your right-hand side of
21 your uniform, correct?

22 A Yes.

23 Q Before there was no -- was there a requirement as to where
24 you had to wear the badge?

25 A Not that I recall.

1 Q People used to wear lanyards before?

2 A Yes.

3 Q Okay. And that was outlawed?

4 A As far as I know, yes. We're not supposed to wear
5 anything that hangs.

6 Q Okay. As well as there was some new restrictions related
7 to jewelry?

8 A Yes.

9 Q Including, I think you mentioned earrings, they had to be
10 non-dangle type earrings?

11 A Yes.

12 Q But you could you have other kinds of earrings, you could
13 have stud earrings or -- as long as they were close to the ear?

14 A Closer to the ear, yes.

15 Q Okay. Same thing with necklaces?

16 A Honestly, I don't know about the necklaces.

17 Q Fair enough. And you mentioned bare below the elbows.

18 This was a new requirement, you couldn't have anything below
19 your elbows?

20 A That's correct.

21 Q And prior to this new uniform requirement -- was there any
22 particular rules related to what kind of jackets or outerwear
23 nurses could wear?

24 A We have to wear -- I'm sorry, repeat that question.

25 Q Yeah. Prior to the new uniform rule, was there any rules

1 or restrictions related to what kind of jackets or outer wear a
2 nurse could wear?

3 A No.

4 Q Okay. With the new rules, were there restrictions?

5 A Well, we can wear a jacket that has long sleeves, a
6 Memorial jacket, but if we go into a patients room we have to
7 remove it.

8 Q Okay. So, if you're walking through the halls, maybe you
9 want to wear a jacket because you're cold, you could wear a --
10 is it a specific jacket that you're allowed to wear?

11 A Yes.

12 Q Okay. Does it also have your RN designation embroidered
13 on it?

14 A I'm not sure. I can't -- I forget.

15 Q Okay. But there's a -- you know it's a specific uniform
16 jacket that's --

17 A Yes. Because we have to order it from Memorial.

18 Q Okay. So, it's not just wear a particular color or
19 something like that, you have to wear the Memorial Care jacket?

20 A Yes.

21 Q Okay. Now, you mentioned the Exhibit 23, which I think
22 you still have in front of you, this heart shaped badge reel.
23 You took that on May 18th of this year?

24 A Yes.

25 Q So, less than a week ago?

1 A That's correct.

2 Q And is it fair to say that you knew you were coming here
3 to testify at that point?

4 A I don't remember if that was already set up, I'm not sure.

5 Q You knew you were going to have some involvement in this
6 case by that point?

7 A Yes.

8 Q Okay. And you, in fact, were looking to take a picture
9 like this?

10 A Yes.

11 Q Okay. And then this is what you came across and you took
12 this picture and provided it to the counsel for the General
13 Counsel?

14 A That's correct.

15 Q Okay. Now, yourself, you currently wear a -- what was
16 described as a Memorial Care badge reel that was shown to you
17 as General Counsel's Exhibit 8?

18 A Yes. It might be a little bit different. It might be one
19 of the other Memorial -- but it's basically about the same.

20 Q Okay. When did you first start wearing that?

21 A I would say it was probably around maybe December 3rd or
22 4th, somewhere around there.

23 Q Of 2015?

24 A 2015, yes.

25 Q So, roughly, five, six months ago?

1 A Yes.

2 Q Okay. And so for the first year that the policy was in
3 place you didn't wear that?

4 A No, I didn't.

5 MS. KAGEL: Objection. It's outside the scope of direct.

6 JUDGE WEDEKIND: Yes -- you know, the standard is very
7 broad, it just has to be related. Overruled.

8 Q BY MR. ABRAHMS: And you -- prior to that you wore a CNA
9 one?

10 A Yes.

11 Q Okay. And did one of your managers tell you that you
12 needed to wear the Memorial Care one?

13 A Yes.

14 Q Okay. That wasn't the first time somebody from the
15 hospital talked to you about being in proper uniform, was it?

16 A No.

17 Q Judy Fix had a conversation with you as well, correct?

18 A She did.

19 Q And Judy Fix is the -- who's Judy Fix?

20 A Chief Nurse Officer.

21 Q What did she talk to you about?

22 A About my jacket.

23 Q Okay. What did she say to you?

24 A She came up to me and she touched my jacket and she said,
25 you're not supposed to be wearing that, you're supposed to be

1 wearing the Memorial jacket.

2 Q Okay. And what else happened?

3 A I said, oh okay, I will do that and I removed my jacket.

4 Q Okay. Did she stand there and wait for you to remove it?

5 A No, I think she walked away and I went into our staff room
6 and removed my jacket.

7 Q Okay. So, she's kind of reminding you of the policy?

8 A Yes.

9 Q Did you receive any kind of formal discipline as a result
10 of that?

11 A No.

12 Q You mentioned that you have huddles?

13 A Yes.

14 Q And those are the meetings that you guys have on a regular
15 basis?

16 A Yes.

17 Q Now, most of those huddles are led by a clinical nurse
18 specialist; is that right?

19 A That's correct.

20 Q And clinical nurse specialists, those are members of the
21 bargaining unit; isn't that right?

22 A That's correct.

23 Q You also mentioned skills day or skills train -- did you
24 say skills day or am I --

25 A Skills day.

1 Q Okay. Skills day happens regularly -- or is it once a
2 year? Or twice a year? How often does that happen?

3 A Once a year.

4 Q Once a year and patient care providers have to go through
5 refresher training on some of the skills that they need?

6 A Yes.

7 Q Okay. Now, nurses participate in that skills day training
8 typically on their regularly scheduled day off; is that right?

9 A Yes.

10 Q So, when they come in for skills day, they're not required
11 to wear their uniform?

12 A I don't know what the requirements is for that.

13 Q Okay. Did you wear your uniform when you went to skills
14 day?

15 A I'm trying to remember if I did or not -- I don't
16 remember, sorry.

17 Q Okay. But you certainly saw people there that were not
18 wearing uniforms?

19 A Yes.

20 Q And most of the skills day training that's being provided
21 to you is being provided by bargaining unit nurses, correct?

22 A Yes.

23 Q So, you're going kind of from station to different
24 stations and there's a bargaining unit nurse who's helping
25 facilitate that training?

1 A That's correct.

2 Q Okay.

3 MR. ABRAHMS: I don't have anything further. Thank you.

4 JUDGE WEDEKIND: Any redirect?

5 MS. PARKER: Just a couple minutes off the record.

6 JUDGE WEDEKIND: Okay. Off the record.

7 (Off the record at 9:35 a.m.)

8 JUDGE WEDEKIND: Back on the record.

9 **REDIRECT EXAMINATION**

10 Q BY MS. KAGEL: Ms. Castillo, these huddles, how frequently
11 would you have them?

12 A Daily.

13 Q Daily? Multiple times a day or just once a day?

14 A There's two different types that we have during the day.

15 So, in the morning we have the nurse lead who runs it and

16 she'll get a report from each nurse on what the plan of care is

17 for each patient and then she escalates that back up to

18 management.

19 Q And does nurse lead also lead the second one in the day as
20 well?

21 A No. That's the AUM.

22 Q So, the AUM -- okay. How many people are -- attend the
23 huddles?

24 MR. ABRAHMS: Objection. Vague. She said there are two
25 different kinds.

1 Q BY MS. KAGEL: How many RNs attend the first huddle?

2 A I would say six to seven depending on how many nurses are
3 on the floor, so around seven -- six to seven. Also, pharmacy
4 attends, speech therapists, physical therapy and I think that's
5 it, I can't think of anybody else.

6 Q Are there any AUMs in attendance during that first huddle?

7 A Yes. Sometimes -- well, sometimes, not always.

8 Q Okay. And are there -- how many AUMs are in attendance
9 during that second huddle?

10 A One.

11 Q All right. And for the first huddle, how often do AUMs
12 attend these meetings?

13 A For the first one?

14 Q Uh-huh.

15 A I would say less than 50 percent of the time, it's usually
16 led by the nurse.

17 Q It's usually led by a nurse?

18 A Yes.

19 Q But sometimes AUMs are in attendance?

20 A Yeah, sometimes.

21 Q And how many of your co-workers employees are at the
22 second huddle?

23 A Usually I would say the majority, if they're not with a
24 patient.

25 Q Okay. Is it just one AUM leads the meeting?

1 A It's just one AUM.

2 Q Okay. Is it the same AUM?

3 A No, it just depends on the day.

4 Q And in terms of your other interactions with the AUM, you
5 said their offices are on the floor?

6 A Yes.

7 Q Are they ever walking around the floor?

8 A Yes.

9 Q And what other interactions do you have with AUMs
10 throughout the day?

11 A They just come by to see if we're okay, if we need
12 anything, need any help with patients. If there's a rapid
13 response call they come -- they have to be there during that
14 time.

15 Q Do you ever interact with them on your breaks?

16 A I mean, usually they are -- you might see them walk by,
17 but no.

18 Q Do they excuse you for your breaks?

19 A I'm not sure what you mean.

20 Q When you're working with a patient and maybe it's time for
21 you to take a break, do they come and tell you it's time to
22 take a break?

23 A No.

24 Q How often do they come around giving you assignments
25 throughout the day?

1 A They usually don't give us assignments, it's usually the
2 relief coordinator, who gives us a patient -- or an assignment.

3 Q But they help make the assignments?

4 A They'll help the relief coordinator with that.

5 JUDGE WEDEKIND: Any further cross?

6 MR. BERUL: Well, I might have --

7 JUDGE WEDEKIND: Oh, excuse me. Pardon me.

8 MR. BERUL: -- just one or two. Just a couple, Your
9 Honor.

10 **REDIRECT EXAMINATION**

11 Q BY MR. BERUL: Good morning, Ms. Castillo.

12 A Good morning.

13 Q I'm Micah Berul, attorney for the Union. With the
14 huddles, you talked about two different huddles during the day,
15 is there a third huddle as well in your department?

16 A No, I don't think so.

17 Q So, in your department it's two huddles a day?

18 A Two huddles.

19 Q Okay. I just wasn't sure about that. That's all that I
20 have.

21 A Okay.

22 MR. ABRAHMS: Just a few if I could.

23 **RECROSS EXAMINATION**

24 Q BY MR. ABRAHMS: So, just to get -- this first huddle, you
25 said there's six or seven RNs and then you listed a number of

1 other patient care provider classifications that are also in
2 this huddle. In terms of total people, how many total people
3 are in that huddle, approximately?

4 A I don't know, maybe 20.

5 Q Okay. And that's the one is generally run by the clinical
6 nurse specialist?

7 A That's correct.

8 Q Then the second huddle where you said a majority of your
9 colleagues were there, does that also include non-RNs, the
10 pharmacists, the patient care assistants, the pharmacy techs?
11 All those folks?

12 A No. It's usually includes the nurses and patient care
13 assistants.

14 Q Okay. Nurses and patient care assistants and how many
15 people total would that be about?

16 A I don't know, maybe ten.

17 Q Okay. And that might be an AUM or that might be a relief
18 coordinator?

19 A It's usually the AUM.

20 Q Okay. Do relief coordinators do it sometimes?

21 A Sometimes.

22 Q Now, I don't think that terms been used in the hearing so
23 far. What is a relief coordinator?

24 A It's like a charge nurse.

25 Q Okay.

1 A So, she runs what's going on on the floor, makes the
2 assignment and just kind of overlooking what's going on on the
3 unit.

4 Q Okay. So, she's kind of -- kind of day to day watching
5 what's happening on the unit?

6 A Yes. But she's in charge of any issues that come up with
7 patients, with family members, she's placing patients from the
8 emergency or if they're being transferred from the ICU and she
9 works together with the AUM and also with nurses.

10 Q Okay. And he or she -- well, is that -- is the same
11 person a relief coordinator every day that they work or can
12 they be a relief coordinator one day and something else another
13 day?

14 A They can be something else another day.

15 Q Okay. So -- and are those bargaining unit nurses?

16 A Yes.

17 Q Okay. And so on a particular day your assignment, if
18 you're qualified to be a relief coordinator might be to be a
19 relief coordinator on another day you would be a nurse taking
20 the patient load?

21 A That's correct.

22 Q Okay. And then that relief coordinator might be kind of a
23 liaison between the nurse and the AUMs?

24 A Yes.

25 Q Okay. Now, you mentioned -- well, let's talk a little bit

1 about schedules. Are you a full-time nurse?

2 A Yes, I am.

3 Q And so how many days a week do you work?

4 A Three.

5 Q Okay. How many -- do you know how many days a week AUMs
6 work?

7 A I think it's three.

8 Q And, obviously, the hospital is a seven day a week
9 operation?

10 A That's correct.

11 Q And people have to rotate and have to work certain
12 weekends and certain weekdays and certain holidays?

13 A That's correct.

14 Q Okay. So, you wouldn't necessarily always be working with
15 the same AUM?

16 A No.

17 Q Okay. Because that's rotation would go -- you may not see
18 the AUM for a couple of weeks?

19 A I wouldn't say a couple of weeks.

20 Q Okay. What would you say?

21 A I would say maybe a couple of days.

22 Q Okay. Now, you mentioned also the term preceptor; is that
23 anyone?

24 A A preceptor? No. It's a staff nurse that teaches a new
25 grad or a student.

1 Q Okay. So, it's somebody who's got qualifications to teach
2 somebody else?

3 A That's correct.

4 Q And so when you mentioned the preceptor nurse, that would
5 be a bargaining unit nurse who's achieved some professional
6 ability to train other people?

7 A That's correct.

8 Q Okay.

9 MR. ABRAHMS: Okay. I don't have anything else. Thank
10 you.

11 JUDGE WEDEKIND: One more time?

12 MS. KAGEL: No.

13 JUDGE WEDEKIND: No?

14 MS. KAGEL: Nothing.

15 JUDGE WEDEKIND: Okay. Thank you very much, Ms. Castillo.

16 THE WITNESS: Sure.

17 JUDGE WEDEKIND: We do have a sequestration order in
18 effect, which means that you should not discuss your testimony
19 with any other witness or potential witness in this proceeding
20 until it's over.

21 THE WITNESS: Okay.

22 JUDGE WEDEKIND: And it's not clear yet whether there will
23 be any.

24 THE WITNESS: Okay.

25 JUDGE WEDEKIND: Thank you. All right. Any further

1 witnesses at this time, Counsel?

2 MS. PARKER: We have no further witnesses.

3 JUDGE WEDEKIND: Okay. Charging Party, any witnesses?

4 MR. BERUL: No, no, no witnesses, Your Honor.

5 JUDGE WEDEKIND: Okay. You rest?

6 MS. PARKER: We rest.

7 JUDGE WEDEKIND: Okay. Respondent?

8 MR. ABRAHMS: If we could have five, ten minutes max,
9 please?

10 JUDGE WEDEKIND: Sure. Okay. Let's go off the record for
11 five minutes.

12 MR. ABRAHMS: Thank you.

13 (Off the record at 9:47 a.m.)

14 JUDGE WEDEKIND: Respondent, are you ready to call your
15 first witness?

16 MR. ABRAHMS: We are. The Respondent calls Judy Fix to
17 the stand.

18 JUDGE WEDEKIND: Good morning, Ms. Fix.

19 MS. FIX: Good morning.

20 JUDGE WEDEKIND: Could you raise your right hand for me?
21 Whereupon,

22 **JUDITH FIX**

23 having been duly sworn, was called as a witness herein and was
24 examined and testified as follows:

25 JUDGE WEDEKIND: Thank you. Please state your full name

1 and spell it for us.

2 THE WITNESS: My name is Judith Fix, it's F-I-X.

3 JUDGE WEDEKIND: That's fine. Thank you.

4 **DIRECT EXAMINATION**

5 Q BY MR. ABRAHMS: Good morning, Ms. Fix. Where are you
6 currently employed?

7 A I'm employed at Long Beach Memorial Medical Center.

8 Q And how long have you worked at the hospital?

9 A In June it will be 16 years.

10 Q Okay. And what is your position?

11 A I hold the position of senior vice president of patient
12 care services and chief nurse officer.

13 Q Patient care services, what is that?

14 A That entails oversight of all individuals who provide
15 hands on care to patients.

16 Q So, that would include registered nurses?

17 A That's correct.

18 Q And are you, yourself, a registered nurse?

19 A Yes, I am.

20 Q What is your education?

21 A I have a Masters Degree in a Masters of Science and
22 Nursing.

23 Q Masters of Science and Nursing?

24 A Yes.

25 Q Okay. How long have you been a registered nurse?

1 A Forty-two years.

2 Q And did you practice at the bedside for any period of
3 time?

4 A Yes, I practiced approximately ten years.

5 Q Okay. And since that time you've been in your --

6 A I've been in various levels of management positions.

7 Q Okay. The entire -- your entire career, were they in
8 acute care hospitals?

9 A Yes.

10 Q And do you still maintain your RN license?

11 A Yes.

12 Q All right. And so you have continuing education
13 requirements related to that?

14 A That's correct.

15 Q Your entire time at the hospital, have you been in the
16 same position?

17 A Yes.

18 Q Okay. Can you describe, generally, what your role and
19 responsibilities are in that position?

20 A They roles and responsibilities are to ensure that we have
21 the highest standards of patient care provided, based on best
22 known evidence and research and that we provide high quality
23 care to our patients as measured by multiple outcome
24 indicators.

25 Q Do you know, personally, how many employees are at the

1 hospital?

2 A I think there's about 6,000 employees employed at Long
3 Beach Memorial Medical Center.

4 Q Okay. And how many of those are involved in patient
5 care?.

6 A I'd say about 3800.

7 Q Okay. And are all of them, ultimately, reporting up to
8 you?

9 A Some of them are not directly reporting to me, they might
10 have a what's called a daughter relationship and then I have
11 oversight regarding patient care, but then they might have
12 operational reporting to another executive.

13 Q Okay. But you're responsible for all the patient care?

14 A Yes.

15 Q Okay. And do you have involvement in either creating,
16 modifying or administrating policies?

17 A Yes.

18 Q What types of policies?

19 A They would be any policies that involve the patient,
20 perhaps the patient's family and anything around either the
21 direct care of the patient or the environment of care for the
22 patient.

23 Q Does that include any responsibilities related to security
24 at the facility?

25 A Yes.

1 Q How so?

2 A Well, of course, the security of the patient is highly
3 important aspect of what any hospital has to insure and so we
4 make sure that we have -- are providing the highest levels and
5 degree of security for our patients and we have even some extra
6 requirements, of course, because we also are a women's and
7 children's hospital. So, we have infants and pediatric
8 patients as well, which requires even a higher level of
9 scrutiny around security.

10 Q There's been some discussion in these proceedings related
11 to Memorial Care; what is Memorial Care?

12 A Memorial Care would be the parent company of Long Beach
13 Memorial Medical Center, we're one of its subsidiaries.

14 Q Okay. So, Long Beach Memorial Medical Center is a
15 subsidiary of --

16 A Memorial Care.

17 Q Does the hospital maintain separate policies from Memorial
18 Care?

19 A Yes.

20 Q Are there are also policies that are shared or adopted?

21 A Right.

22 Q And how does that work?

23 A So, Memorial Care will have policies and the hospital can
24 then take the policy and individualize it for aspects that
25 might be different from oversight of being general all

1 employees of the institution and so, we at the hospital must
2 then review the policy, have our own policy perhaps
3 individualized for our environment and those policies have to
4 be independently approved by the hospital's board of directors.

5 Q Okay. So, there's separate board of directors for the two
6 companies?

7 A Yes, that's -- let me see, yes.

8 Q Okay. And separate executives? The CEOs are separate
9 people? Different people?

10 A Yes.

11 Q Okay. In terms of the size of the hospital, how would you
12 describe it

13 A Our campus is very large. We actually -- between our two
14 hospitals on the campus are the second largest campus west of
15 the Mississippi, so we're a very large medical center.

16 Q And what kind of operations are at the -- I just realized
17 that sounded -- what types of care is provided at the hospital?

18 A Well, we're considered a tuitionary platenary (phonetic)
19 medical center, so that means we provide almost everything a
20 patient might need or require except for transplants. We don't
21 do transplants.

22 Q Okay. And you mentioned that there's a women's and
23 children's aspect to the hospital as well?

24 A Right. There's a separate -- there's two separately
25 licensed hospitals on the campus, one is Long Beach Memorial

1 and one is Miller Children's and Women's Hospital Long Beach.

2 So, there's two separate licensed facilities.

3 Q Okay. Both rolling up under Long Beach Memorial Medical
4 Center which then rolls up to Memorial Care.

5 Q Okay. And is there an emergency room?

6 A Yes.

7 Q Approximately how many city blocks does the hospital take
8 up?

9 A Well, it's a very large campus. It goes between Long
10 Beach Boulevard and Atlantic on -- east to west and then north
11 to south, between Spring and let me see, what would be that
12 other street?

13 Q Well, just tell me a number of blocks, how many blocks
14 would you think?

15 A City blocks? Maybe ten.

16 Q Okay. And this is going to sound silly, but where is it
17 located?

18 A In Long Beach, California.

19 Q And what type of community or city is Long Beach?

20 A It would be considered an urban area. So, that it has
21 many of the challenges of any city.

22 Q Does that impact the security policies and practices at
23 the hospital?

24 A It definitely makes us insure a higher rigger around
25 security, because of the location of the medical center.

1 Q Okay. And are you familiar with the hospital's security
2 policies and practices generally?

3 A Yes.

4 Q And do you have any involvement in the creation of
5 modification of those policies?

6 A Yes.

7 Q Okay. And why is that, again?

8 A Well, that's because security impacts patients and their
9 care and I'm also an executive responsible for the safety of
10 our patients and our personnel.

11 Q And what type of -- since 2008 has anything occurred at
12 the hospital that has prompted an enhancement of security
13 proceedings?

14 A Well, in 2008 we did have an active shooter situation at
15 our medical center, which, of course, increased further rigger.
16 However, we annually do a fairly thorough security check of the
17 medical center. We bring in outside consultants and expects to
18 make sure that our security is at the highest standard possible
19 around all areas. And we also do a lot of drilling around
20 staff readiness for a security breach.

21 Q Okay. Does the hospital employ its own security
22 personnel?

23 A Yes.

24 Q Can you describe the security force at the hospital?

25 A We have a fairly large security force, they're very well

1 trained and it's such being in an urban area that we also have
2 a K-9 unit. So, in addition to, approximately, 70 security
3 guards 24/7 we have, as I said, three K-9 units which are very
4 effective in our environment.

5 Q And these are K-9 units that are assigned to the hospital?

6 A Yes. They go home with their trainers who are members of
7 the public safety department.

8 Q And that's what you call the security department, Public
9 Safety Department?

10 A Yeah, we call them public safety.

11 Q Okay. And are identification badges part of the security
12 protocols?

13 A Yes.

14 Q And are you familiar with the hospital's policies and
15 practices related to identification badges?

16 A Yes.

17 Q Okay. I'm going to show you -- I think I'll just do this
18 together to make it quicker, four different documents and ask
19 you to take a look at them. We will mark them Exhibits 1
20 through 4.

21 **(Employer Exhibit Number 1 through 4 Marked for Identification)**

22 JUDGE WEDEKIND: Do you have a lot of exhibits?

23 MR. ABRAHMS: We're going to have -- well, yes.

24 JUDGE WEDEKIND: If you could start marking them as --
25 before we get to this point. I don't care if they come in in

1 order --

2 MR. ABRAHMS: Oh, okay.

3 JUDGE WEDEKIND: -- so just have them marked.

4 MR. ABRAHMS: Okay.

5 JUDGE WEDEKIND: See if we can avoid some of this delay as
6 to each exhibit. Another thing I don't mind is, you can write
7 it in too, you don't have to put stamps on them.

8 Q BY MR. ABRAHMS: Okay. So, I placed before the witness
9 four documents. The first one, Exhibit 1 should say in the
10 subject line, right at the very top will say, under the
11 reference line, for identification purposes, PC271 and under
12 the subject line, visiting plan. Do you recognize this
13 document?

14 A Yes.

15 Q And what is this document?

16 A So, the visiting plan is the policy regarding visitation
17 for patients at the medical center.

18 Q And I'm just going to identify each of these before I get
19 into the more in depth questions.

20 A Uh-huh.

21 Q The second one in the reference line should say PC271.01,
22 subject line visitor management.

23 A Correct.

24 Q What is that document?

25 A This is the actual methodology used to insure that

1 everyone who's visiting at the medical center is properly
2 identified.

3 Q And the third document marked Exhibit 3, it says in the
4 reference line PC271.02 and under the subject says, security
5 infants and children. Do you recognize that?

6 A Yes.

7 Q And what is that document?

8 A So, this document is a further individualization of the
9 visiting plan, specific to the Women's and Children's Hospital.

10 Q Okay. Now that we have them all identified, you're
11 familiar with each of these policies?

12 A Yes, I signed them.

13 Q Okay. And the -- who do these policies apply to?

14 A These apply to any individual who comes onto the hospital
15 campus.

16 Q Okay. Does that include employees?

17 A These -- the employees are mentioned in these plans, yes.

18 Q Okay. So, let's look -- Employer Exhibit 1, 2 and 3, they
19 each say by Patient Care Services on the front page.

20 A Correct.

21 Q Why does it say that?

22 A Because these policies fall under the authority of the
23 patient care services portion of the medical center. It goes
24 through a certain approval process when it's a patient care
25 policy.

1 Q Okay. And, ultimately, that leads up to you?

2 A That's correct.

3 Q Okay. And so do each of these bear your signature?

4 A They do.

5 Q Okay. So, do these documents deal with the ID badge
6 system?

7 A These deal with the ID badge system for visitors or
8 vendors or anyone coming into the medical center who is
9 actually not an employee.

10 Q Okay.

11 A Unless the employee is coming in not as a staff individual
12 working in the unit.

13 Q So, if an employee is coming in as a visitor --

14 A Yes.

15 Q -- they still need to go through this process?

16 A Yes, that's correct.

17 Q Okay. Looking at Employer Exhibit 1, does it tell us --
18 is that anywhere indicated on here?

19 A Yes. So, in PC271 on page 2 of three, 6D addresses
20 employees who are visiting hospitalized patients.

21 Q Okay. And that indicates that they need to go through the
22 -- they need to check in like any other visitor and wear a
23 visitor badge?

24 A That's correct.

25 Q Okay. So, the visitor badge is different than a employee

1 badge?

2 A Yes. It's different than an Employee ID badge.

3 Q Okay. And could you just describe for me generally the
4 visitor badging system?

5 A Right.

6 Q How one gets a visitor badge.

7 A Uh-huh.

8 JUDGE WEDEKIND: Can you just explain the relevance of the
9 visit are issue

10 MR. ABRAHMS: I'm sorry

11 JUDGE WEDEKIND: Can you just explain the relevance of the
12 visitor issue?

13 MR. ABRAHMS: I'm sorry?

14 JUDGE WEDEKIND: Can you explain the relevance of this
15 testimony?

16 MR. ABRAHMS: Certainly. The relevance of all this
17 testimony is going to be that there is a very, very specific
18 badging system, and that everything related to badges, whether
19 it's pins or it's the color of the badge, whether it's where
20 it's worn goes towards the security and the patient care issues
21 that were there. It goes to justify the special circumstances.

22 JUDGE WEDEKIND: Do you dispute that? I'm just concerned
23 that we're getting a lot of testimony that -- in so much
24 detail. Is there any dispute that the hospital has a security
25 system and they require visitors to wear badges and that

1 security is important at the hospital?

2 MS. PARKER: No.

3 MR. BERUL: And none from the union, and I was waiting to
4 make an objection myself to see how far it went.

5 JUDGE WEDEKIND: Yeah.

6 MR. BERUL: Because I don't think it's in dispute that the
7 hospital would have security policies in place.

8 JUDGE WEDEKIND: Is your position that this hospital has
9 greater security than other hospitals in the country?

10 MR. ABRAHMS: Oh, absolutely.

11 JUDGE WEDEKIND: Okay. Why don't you just get testimony
12 about that. I mean, as to employees --

13 MR. ABRAHMS: Part of it also goes to the coloring of the
14 badges and stickers and other things that go on the badges.

15 JUDGE WEDEKIND: But what does that have to do with
16 employee badges, visitor badges? I mean, the fact that you
17 require visitor to wear badges, what does that have to do with
18 employees' badges, whether they can have stickers on them or
19 use their own pulley clip? I don't understand the relevance.
20 I'm just concerned that we're getting a lot of testimony. 1
21 and 2 seem to apply only to visitors. I'm not sure about
22 number 3, infants and children. Now, employees may have a
23 responsibility to enforce these. In fact, I can see that in
24 there.

25 MR. ABRAHMS: Uh-huh.

1 JUDGE WEDEKIND: They're supposed to check. But what does
2 that have to do with the badges employees wear?

3 MR. ABRAHMS: Well, I think if the General Counsel is not
4 going to dispute that every person needs to wear badge visibly
5 displayed at all times --

6 JUDGE WEDEKIND: Well, there is no dispute that employees
7 do. That's the only issue in this case.

8 MR. ABRAHMS: Okay.

9 JUDGE WEDEKIND: I mean, again, absolutely security is an
10 important thing, but do we have to have the policies for
11 visitors and the extensive testimony about what visitors are
12 required to do, et cetera, et cetera?

13 MR. ABRAHMS: I don't know that there's going to be
14 extensive testimony. I have like six more questions left

15 JUDGE WEDEKIND: Well, I didn't know where they were to
16 interrupt. But why don't we just kind of --

17 MR. ABRAHMS: I can wrap this up quick then.

18 JUDGE WEDEKIND: Okay.

19 Q BY MR. ABRAHMS: Do visitor badges have pictures on them?

20 A Yes.

21 Q Do each of the employees have responsibility to ensure
22 that people are complying with the visitor policies that are
23 displayed here?

24 A Yes.

25 Q The one policy that we did not really talk about is

1 exhibit 4. What is this policy?

2 A So this policy is the global policy that establishes the
3 procedure for issuing the identification badges for the
4 employees, for physicians, contract employees, volunteers,
5 clergy and vendors. So people who are not there to visit a
6 patient, but are there for other purposes of the medical
7 center.

8 Q Okay. So this is -- you described the different types of
9 policies. This looks like slightly different than the -- than
10 Exhibits 1, 2, 3 in that it has a Memorial Health Services logo
11 on the front.

12 A Correct.

13 Q Is this a hospital policy or --

14 A So this would be a Memorial Care policy applying to all of
15 the subsidiaries of Memorial Care.

16 Q Okay. And then in the area that Ginger -- I guess in the
17 box on the right-hand corner.

18 A Yes.

19 Q Ginger. I don't know how to say that. Aladep?

20 A Aladep, yes.

21 Q Do you know who that is?

22 A Yes.

23 Q Who is that?

24 A So she is the director of environmental safety for the
25 medical centers.

1 Q For the hospital or for --

2 A She is at the hospital, but it looks like she wrote the 1
3 policy for Memorial Care.

4 Q Okay. And this talks about the process for getting a
5 badge.

6 A That's correct.

7 Q Does it talk about the process of when they must be worn?

8 A Yes.

9 Q Where is that?

10 A It's number 2 under employee, if you want to talk about
11 the employee, where they must be worn and displayed at all the
12 times while on the campus.

13 Q Okay.

14 A And then it goes into the physicians and vendors,
15 volunteers and clergy, contractors.

16 MR. ABRAHMS: I'll ask that Employer Exhibits 1 through 4
17 be admitted.

18 JUDGE WEDEKIND: Any objection?

19 MS. PARKER: No objection from the General Counsel.

20 MR. BERUL: I have an objection just, again, based on the
21 relevance. I don't think there's any dispute that the nurses
22 wear their ID badge that is distributed by Long Beach Memorial
23 Medical Center. The issue is, you know, as framed in the
24 complaint, does not relate in any way to visitation. So I, you
25 know, I don't see the relevance of this.

1 JUDGE WEDEKIND: My concern was really the amount of
2 detail when there's no dispute. I'm going to allow the
3 policies and rules in because I think they want to establish
4 how important security is and what the security protocol is and
5 that's fine.

6 MR. BERUL: Fair enough.

7 JUDGE WEDEKIND: Overruled. 1 through 4 are received.

8 **(Employer Exhibit Number 1 through 4 Received into Evidence)**

9 MR. ABRAHMS: Thank you.

10 Q BY MR. ABRAHMS: Okay. Let's talk about employee ID
11 badges. You mentioned employees are supposed to wear them at
12 all times.

13 A They are to be displayed at all times while on the campus.

14 Q So even if they are on break, they need to be wearing
15 their badge?

16 A Yes.

17 Q And is there any particular electronic coding associated
18 with the badges?

19 A Yes.

20 Q What is that?

21 A So when the badge is provided to the employee after they
22 go through human resources, they have certain levels of access
23 that are determined for each employee, and that access is
24 programmed into the badge itself.

25 Q Do all employees have the same access?

1 A No.

2 Q How is it different?

3 A So if I'm an employee who does not have a need to be in
4 the operating rooms, I would not have a badge that would allow
5 me to access electronically, the doors automatically open with
6 a badge, and I would not be able to access the operating rooms.

7 Q Okay. So depending on what my job is and where I'm
8 supposed to be?

9 A Right.

10 Q The badge gets me in certain places?

11 A Yes, uh-huh, also certain parking areas.

12 Q Okay. So the employees have to use the badge on a regular
13 basis as they're going about their day?

14 A That's correct.

15 Q I'm going to ask that you be handed General Counsel
16 Exhibit 7. So this is a picture that was put in evidence
17 earlier in these proceedings, and there appears to be a badge
18 there. Do the colors mean anything on the badge?

19 A Yes, the colors do mean something.

20 Q What do they mean?

21 A Well, there is -- based on your professional discipline,
22 there will be a different color stripe. In this case it's
23 blue, because a blue strip connotes registered nurse on our
24 campus. Other disciplines would have another, different color
25 stripe where it announces their professional status. And in

1 this case there is also pink, which alerts us to the fact that
2 this is a nurse who is allowed to transport pediatric patients
3 or infants.

4 Q So if I were a registered nurse who worked with adult
5 patients, I would still have the blue line there that says
6 registered nurse 4?

7 A That's correct.

8 Q What color would the background where my name is be?

9 A It would just be white.

10 Q It would be white. And what does that indicate then, if I
11 just had a white one? What can't I do and can I do?

12 A So as part of our security system, parents and staff are
13 taught that if there is not a pink badge they do not either
14 give their child to that individual, or that person is not
15 allowed to transport children or pediatrics. So we would not
16 permit them to do so.

17 Q And in this one it says pediatric acute underneath where
18 it says registered nurse. What is that?

19 A That would be the patient care unit that the registered
20 nurse is assigned to work in.

21 Q So in the visitor badges we discussed is there any
22 restriction on where people can go or does it say anything
23 about the locations?

24 A Yes. On the visitor badge it will denote exactly what
25 unit the individual that you're visiting is located on, and it

1 is -- the date is on the badge as well as the unit that you're
2 allowed to be in.

3 Q And so when an employee is hired, they are given one of
4 these badges?

5 A Yes. They go to the security office and they have a badge
6 made.

7 Q Are they also given -- in this picture on General Counsel
8 Exhibit 7, it appears that there's like a clear plastic sleeve
9 that the badge is in?

10 A That's correct. That's also provided by the medical
11 center for the employee.

12 MR. ABRAHMS: Okay. I'm going to go ahead and mark
13 Exhibit 5, but I'm also going to give you and the Judge a
14 physical copy of it.

15 **(Employer Exhibit Number 5 Marked for Identification)**

16 Q BY MR. ABRAHMS: So I've handed you -- what have I handed
17 you?

18 A You've handed me the clear plastic holder for the badge
19 with a clip that is attached to the clear plastic holder that's
20 given to each employee, and included is a card which helps the
21 employee identify the emergent codes that we use in the medical
22 center and some key phone numbers.

23 Q And those codes would be called out over an intercom?

24 A That's correct.

25 Q And if you look at Employer Exhibit 5, is it an accurate

1 reflection of the physical holder that I've provided you?

2 A Yes.

3 Q Okay. So everybody is provided one of these sleeves as
4 well?

5 A Yes.

6 Q And which -- if I'm looking at Employer Exhibit 5, there
7 is the front and the back of that. Which side is the back?

8 A Well, the back would usually display the code
9 information.

10 Q So --

11 A So it's just slipped in front of the code information.
12 This can be transposed or changed to however you would like to
13 have the actual clip, so the clip can vary on how you attach
14 the clip, depending upon your individual taste.

15 Q And for the record, when you referred to this, you were
16 referring to the little plastic and metal clip that would come
17 on and off the sleeve?

18 A Right, exactly.

19 Q Okay. And those clips would be used to attach to?

20 A They can be used to attach directly to the uniform or any
21 other -- for other individuals in the medical center, they may
22 attach it to other areas, but it's specified where it's
23 attached on direct care givers.

24 Q I don't want to talk about the policy just yet, but
25 physically could you also use that on a lanyard? Could you use

1 this sleeve with a lanyard?

2 A You could use this sleeve with a lanyard if you were not
3 in a direct care area.

4 Q I'm just talking physically.

5 A Yes.

6 Q You could connect this?

7 A Yes, you could connect this to a lanyard.

8 Q Okay. Or to a badge reel?

9 A Or to a badge reel or directly to your uniform.

10 Q Were employees previously allowed to wear -- direct care
11 patient providers previously allowed to wear lanyards?

12 A They were.

13 Q Are they currently allowed to wear lanyards?

14 A No.

15 MR. ABRAHMS: May I ask that you be handed something,
16 General Counsel Exhibit 8.

17 THE WITNESS: Uh-huh.

18 Q BY MR. ABRAHMS: Do you recognize this?

19 A Yes.

20 Q What is it?

21 A This is the current badge reel that's distributed to the
22 medical center.

23 Q Is that logo -- does that significant anything?

24 A Yes, that is the Memorial Care logo.

25 Q And this could be snapped to that holder?

1 A That's correct.

2 MR. ABRAHMS: I'll ask that Employer Exhibit 5 be
3 admitted.

4 JUDGE WEDEKIND: Any objection?

5 MS. PARKER: No objection, but if we could see the actual
6 physical --

7 MR. BERUL: I was going to say the same thing, so I could
8 have due diligence -- just to have a look.

9 MS. PARKER: No objection from General Counsel.

10 MR. BERUL: No objection.

11 JUDGE WEDEKIND: It's received.

12 **(Employer Exhibit Number 5 Received into Evidence)**

13 MR. ABRAHMS: Thank you.

14 Q BY MR. ABRAHMS: I'm going to hand you something I'm going
15 to mark as Employer Exhibit 6, and ask you to take a look at
16 that.

17 **(Employer Exhibit Number 6 Marked for Identification)**

18 Q BY MR ABRAHMS: Do you recognize this?

19 A Yes.

20 Q What is it?

21 A It's a placard that can be attached to the badge reel that
22 was designed to drop below the badge, to give a designation of
23 a professional status.

24 Q So this would be attached to the badge holder?

25 A That's correct.

1 Q How large is this? This is a close-up picture. Roughly,
2 if it was properly attached, how would it be displayed? Would
3 you be able to see -- how much of the blue would you see?

4 A If they attached it to the -- about that much.

5 Q So the RN would just be underneath?

6 A Right, exactly.

7 Q At any point in time were these used by hospital RNs?

8 A Yes. We did distribute these to hospital RNs for a period
9 of time.

10 Q Have you stopped distributing these to hospital RNs?

11 A We have stopped distributing to hospital RNs because the
12 RNs gave feedback that they were bulky and with too low.

13 Q What was the purpose of giving these to RNs?

14 A It was our first attempt to satisfy a request from our
15 patients and our physicians to readily identify who the
16 registered nurse was on the unit, since there are so many
17 people involved in direct patient care.

18 Q At the time that these were utilized did you have
19 standardized scrub color uniforms?

20 A We did not.

21 Q So would this be before the current uniform policy?

22 A Yes.

23 Q Is the display of the professional designation important?

24 A Yes.

25 Q Why?

1 A Well, we received constant input from our patients, their
2 families, as well as other members of the health team that it
3 was very hard to know who was the individual coming into the
4 room to see the patient or to talk with the family member.
5 Because there was -- it was hard to distinguish one type of
6 employee from another type of employee or one professional
7 discipline from another professional discipline.

8 Q This feedback you received from who?

9 A We received it from patients, families, physicians,
10 broadly.

11 Q So the physicians in the hospital don't necessarily know
12 who each individual is or what their classification is?

13 A No, they wouldn't know that.

14 Q Why not?

15 A Well, occasionally a physician -- well, a registered nurse
16 works about three days a week. So there's a constant change or
17 shift of personnel. Patient care assignment change. So the RN
18 -- there's a different RN today than yesterday dealing with the
19 physician on the same patient. So the physicians, unless they
20 are what you would call routine users of one unit, would not
21 know the registered nurses on that unit necessarily.

22 Q How many registered nurses are employed by the hospital?

23 A We have about -- well, 2147.

24 Q About?

25 A Just happened to look at that number this week.

1 Q So I'm going to say about 2150. And I think you said you
2 had about 3800 direct patient care providers?

3 A Yes.

4 Q So the other --

5 A Others are in all other different capacities.

6 Q An RNs is generally known to be registered nurse?

7 A Yes.

8 Q Have you ever seen the initials CNA referred to anything
9 other than California Nurses Association in a hospital?

10 A Yes. CNA is a certified nursing assistant, which would be
11 an unlicensed assisted staff that assists the registered nurse.

12 Q In terms of scope of practice, how do they differ?

13 A An RN directs the activities of the CNA and they have a
14 scope of practice that's very limited by the State under their
15 certification.

16 Q Do they provide medication?

17 A No.

18 MR. ABRAHMS: I'll ask that Employer Exhibit 6 be
19 admitted.

20 JUDGE WEDEKIND: Any objection?

21 MS. PARKER: No objection.

22 MR. BERUL: I'm just going to object on relevancy again
23 because this is prior to the issues at hand here, and as we see
24 in GC7, there's no question that RN is clearly displayed. I
25 don't think that that's in the dispute with the current badge.

1 JUDGE WEDEKIND: I hear you, but I'm going to let it in.

2 MR. BERUL: Okay.

3 JUDGE WEDEKIND: This is background. Overruled. It's
4 received.

5 **(Employer Exhibit Number 6 Received into Evidence)**

6 Q BY MR. ABRAHMS: Okay. Is there anything else that
7 employees wear on their ID badge that provides identification?
8 Who they are or what they do?

9 A Providing identification?

10 Q What their qualifications may be?

11 A They can have, which was not a method of identification,
12 they can wear a professional certification.

13 Q How is that displayed?

14 A That's usually a pin that's provided by the professional
15 organization once you've achieved specialty certification.

16 Q Okay. What is a specialty certification?

17 A A specialty certification is usually provided through a
18 study and a testing process in which the registered nurse would
19 demonstrate skill, knowledge and experience in a specialty type
20 of care for patients.

21 Q Can you give me just some examples that an RN may have?

22 A Sure. An RN could be certified as an oncology nurse. So
23 that she has special knowledge, skills and experience in the
24 provision of care to patients with cancer.

25 Q Any other common certifications that the hospital RNs

1 have?

2 A They have technical certifications, but that's not
3 displayed.

4 Q Okay. What other types of things would be displayed?

5 A What's allowed to be on the badge are your years of tenure
6 as an employee. There's pins that are provided to employees as
7 they receive milestones in their tenure at the hospital. Also
8 what is necessary to be on the badge during the flu season is a
9 sticker that demonstrates that you have been vaccinated against
10 the flu.

11 Q We'll come back to a flu sticker in a minute. So you said
12 the hospital give out years -- service pins?

13 A Yeah, service pins is a good word. I think that's the
14 official name of them, actually.

15 Q Okay. And are there other pins that the hospital
16 distributes that relate to professional achievements of any
17 kind?

18 A Professional achievements? No. I don't think so.

19 Q So the types of pins that are allowed to be on the --
20 well, let me ask.

21 MR. ABRAHMS: Can you provide the witness GC Exhibit 23.

22 Q BY MR. ABRAHMS: There is a pin on there that is displayed
23 that says -- looks like a star. Do you see that?

24 A Yes.

25 Q Do you know what that is?

- 1 A It appears to be a pin for being a preceptor.
- 2 Q Is that a hospital provided pin?
- 3 A It looks like it is provided by the hospital, since it has
- 4 a logo, two logos on it.
- 5 Q Would that be an acceptable pin to be worn?
- 6 A No, not currently. There were a lot of, you know, over
- 7 history and time pins were -- prior to our standardization,
- 8 pins were given out. People had many pins and so they
- 9 sometimes display them. We're not giving out pins at this
- 10 time.
- 11 Q Okay. What pins are currently allowed to be displayed?
- 12 A The service award pin, a professional certification, and
- 13 the "I give" opinion, which mines that you have donated to the
- 14 medical center through philanthropy.
- 15 Q You mentioned a flu shot sticker. I'm going to ask you --
- 16 MR. ABRAHMS: I'm going to ask the witness be provided a
- 17 copy of General Counsel Exhibit 12.
- 18 Q BY MR. ABRAHMS: Do you see a flu shot sticker on this
- 19 picture?
- 20 A Yes.
- 21 Q Where it is?
- 22 A It's on the bottom right-hand of the badge.
- 23 Q Can you describe what it looks like, for the record?
- 24 A It's round and it displays the period of time through
- 25 which the influenza season is taking place. This one is 2014

1 to 2015.

2 Q Okay. Just real quick, there seems to be some other kind
3 of sticker or pin above there that I think was earlier referred
4 to as a cat.

5 A Uh-huh.

6 Q Do you see that?

7 A I do see it.

8 Q Is that permitted to be worn?

9 A No.

10 Q Describe for us how these flu shot stickers work and are
11 used.

12 A I do want to mention this employee is not working in
13 direct patient care.

14 MR. BERUL: I'm going to object. It's not responsive to
15 the question.

16 MS. PARKER: I second that objection.

17 THE WITNESS: Okay.

18 JUDGE WEDEKIND: Sustained.

19 THE WITNESS: All right.

20 Q BY MR. ABRAHMS: All right. Is this person in -- can you
21 tell from this photo whether or not this person is in a patient
22 care area?

23 A Yes.

24 Q Are they?

25 A No, they are not.

1 Q How do you know that?

2 A Because she's working in the blood donor center, which is
3 not included in the patient care services.

4 Q Okay. So going back to the flu stickers, are employees --
5 tell me the process for flu stickers.

6 A So we announce based upon viral load in the environment at
7 the time at which the flu season is going to start. At the
8 point that the flu season is going to start, we make an
9 announcement of that date, give employees a certain amount of
10 time starting to give out flu shots. We provide flu shots
11 through the medical center, and then affix a sticker onto the
12 badge to connote that that individual has received a flu
13 vaccination. At the point that the date arrives in which we
14 have determined flu season officially starts, any employee who
15 does not have a sticker must be wearing a mask while at the
16 medical center.

17 Q So if they are not wearing that sticker, they are supposed
18 to wear a mask?

19 A Yes.

20 Q Are there policies around that?

21 A Yes.

22 Q I'll hand you something we will mark as Employer's Exhibit
23 7. And I'll hand you something else, Employer Exhibit 8.

24 **(Employer Exhibit Number 7 and 8 Marked for Identification)**

25 Q BY MR. ABRAHMS: Do you recognize Exhibit 7?

1 A Yes.

2 Q What is it?

3 A It is the Memorial Care influenza vaccination and
4 protection program that describes the process that I just
5 relayed.

6 Q Okay. And has this policy been adopted by the hospital?

7 A Yes, this policy has been adopted by the medical center.

8 Q And this process of having to wear a sticker, is that
9 anywhere in this policy?

10 A I'd have to read it. It does not refer specifically to the
11 sticker, it refers to proof of receiving the required influenza
12 vaccination. There may be other areas within Memorial Care
13 that don't use a sticker process.

14 Q Okay. So the hospital's process is -- are you --

15 A I was reading under C.

16 Q Under C, okay. Demonstrate proof?

17 A Uh-huh.

18 Q They'll be required to wear a surgical mask. Is that only
19 while they are caring for patients?

20 A No, it's at all times.

21 Q Under H, I'll draw your attention to H.

22 A Okay. Thank you. It states there that a notation will be
23 placed on the badge individuals have received influenza
24 vaccinations.

25 Q So at the hospital that's a sticker?

1 A That's right.

2 Q Is that communicated to employees?

3 A Yes.

4 Q I'll draw your attention to Employer Exhibit 8. What is
5 this?

6 A This would be the frequently asked questions that go to
7 staff regarding the flu season.

8 Q Does this describe the need for a sticker?

9 A I would have to read it.

10 Q Is this provided to all employees or how is this
11 communicated to people?

12 A This is communicated through our intranet website. It's
13 provided as a handout. It's provided through employee health.
14 It's handed out because we actually do traveling flu
15 vaccinations stations that ground through the medical center on
16 all shifts, so that we bring the flu vaccine actually to the
17 individual employee.

18 Q Okay. And the sticker itself, the one that we looked at
19 that said 14/15, that denotes the year?

20 A The time period of the flu, yes. So it crosses between
21 one year and another year, because it's usually October through
22 March.

23 Q And then is there some point in time when it's over,
24 employees can take the sticker off?

25 A Yes, that's correct.

1 Q Does it change? Does the sticker change each year?

2 A Yes, the sticker color changes and the years.

3 Q The sticker color and the years. Okay.

4 MR. ABRAHMS: I'll ask that Employer Exhibit 7 and 8 be
5 admitted.

6 MS. PARKER: No objection from General Counsel.

7 MR. BERUL: No objection.

8 JUDGE WEDEKIND: Both received.

9 **(Employer Exhibit Numbers 7 and 8 Received into Evidence)**

10 Q BY MR. ABRAHMS: Are you familiar with the hospital
11 uniform policies?

12 A Yes.

13 Q Do you know how many policies are at the hospital?

14 A I believe there are three policies that cover the
15 employees at the hospital. There's a broad Memorial Care
16 policy that applies to all employees at Memorial Care, and then
17 there's an individualized policy to applies to direct care
18 givers that is more specific.

19 MR. ABRAHMS: Well, I want to ask the witness be provided
20 a copy of GC Exhibit 4.

21 Q BY MR. ABRAHMS: Do you recognize this policy?

22 A Yes.

23 Q Which one of the three that you described --

24 A So this is the broad Memorial Health Services policy on
25 dress code and grooming standards.

1 Q Okay. And this is the one that would apply to all of the
2 roughly 6000 employees at the hospital?

3 A Yes.

4 Q Okay. And along the lines that we were talking about, the
5 -- I assume the hospital adopted this policy for its use for
6 its non-patient care providers?

7 A Yes, it's adopted. This applies to all employees that are
8 not considered direct care providers at this time.

9 Q Is there any reference to identification badges on this
10 policy?

11 A Yes. Clearly states identification badges shall be worn
12 by everyone with name and picture facing out at a level that
13 can readily be seen.

14 Q Are you referring to page 2?

15 A Yes, page 2 under number 1.

16 Q So this policy doesn't require that it be in any
17 particular side of the body, the badge?

18 A No, it just needs to be visible, readily seen.

19 Q Is there any other reference in this policy that relates
20 to employees' identification badges or any other part that
21 would -- part of this policy that applies to badges?

22 A Appropriate uniforms. I'm not seeing it. It does talk
23 about only MHS under number 10, approved pins, badges and
24 professional certifications may be worn.

25 Q Do you relate number 10 to badges?

1 A Well, it says badges.

2 Q Okay. With respect to jewelry, does this prohibit -- let
3 me back up. Does this policy prohibit lanyards?

4 A No.

5 Q So under this policy a non-patient care providing employee
6 could still wear a lanyard?

7 A Yes.

8 Q What about jewelry? Could -- is there any -- what are the
9 rules related to jewelry under this policy?

10 A This policy permits it to be a minimal amount of jewelry
11 or other accessories. And may be worn safety if health
12 standards are not compromised.

13 Q So could an employee, under this policy, wear earrings
14 that dangled?

15 A Yes.

16 Q Okay. So let's talk about the two patient care uniform
17 policies.

18 MR. ABRAHMS: I'll ask that the witness be handed Exhibits
19 5 and 6.

20 JUDGE WEDEKIND: Before we get to that, did you testify
21 that that number 3, team policy, only applies to employees who
22 do not do direct patient care?

23 THE WITNESS: At this time.

24 JUDGE WEDEKIND: At this time?

25 THE WITNESS: Right. Since we individualized it and made

1 it more specific around direct care providers.

2 JUDGE WEDEKIND: But in July 2014?

3 THE WITNESS: Yes.

4 JUDGE WEDEKIND: It did apply to everyone?

5 THE WITNESS: Yes, in July 2014, it did.

6 Q BY MR. ABRAHMS: Before you look at the other two
7 policies, on this policy, 318, does it anywhere mention
8 employees' ability to wear union insignia?

9 MR. BERUL: Objection to the leading question, speaks for
10 itself.

11 JUDGE WEDEKIND: Overruled.

12 THE WITNESS: So, again, I'm seeing this policy state that
13 only MHS approved pins, badges and professional certifications
14 may be worn.

15 Q BY MR. ABRAHMS: So in terms of pins, badges and
16 professional certifications, those would be limited by that
17 policy?

18 A Right.

19 Q What about generally in terms of other displays of other
20 types of insignia?

21 A No, that would not be objectionable under this policy.

22 Q Okay. So turning to what you have now been provided, GC
23 Exhibits 5 and 6, referring to GC Exhibit 5 is the uniform
24 policy. Is that an accurate way to describe it?

25 A Yes.

1 Q Is that how you would refer to it?

2 A Yes.

3 Q Okay. Now, Exhibit 6 we've been calling the appearance
4 policy. Same question.

5 A Yes.

6 Q Did you have any role in the creation of these policies?

7 A I was, yes, involved in the creation of these policies.

8 Q How did they come about?

9 A Well, they came about due to two reasons. The first
10 reason is the status of hospital acquired infections is a very
11 large concern in hospitals and to regulatory agencies, and so
12 we started to look at our infection control processes and
13 procedures. And the second thing we were attempting to do with
14 this policy was to create -- to respond to the request, ongoing
15 request, from our patients' families, other care providers and
16 physicians to help easily identify who was providing care to
17 them, who was walking into the room, and what their status in
18 the medical center was. And to also create a sense of security
19 to the employees, I mean to the patients, through having a
20 standard appearance for our direct care givers.

21 Q So what did you do to come about what this policy --

22 A So we did rather extensive literature review, in terms of
23 looking at research, evidence. We received a lot of input from
24 our patient and family advisory council and we also talked to
25 other hospitals in our region to see what they were doing

1 around these issues.

2 Q What findings did you have related to how somebody's
3 appearance might impact patient care?

4 A Right. We relied on the infection control standards
5 primarily from SHEA, which is the Society for Healthcare
6 Epidemiology, who had done a meta-analysis of the industry
7 literature and research. So we relied on them for most of the
8 infection control standards. We then used the literature
9 around patient satisfaction, and used that literature to
10 determine how to best meet the patients' needs around standard
11 appearance for professional care givers.

12 Q So was there a finding that -- what was the finding
13 related to standard appearance and how that impacted patient
14 care?

15 A Well, the industry is pretty well researched around the
16 fact that the presence of a standard uniform creates security,
17 a feeling of security and safety for patients, very similar to
18 how a police officer's uniform creates safety and security for
19 individuals who are around, for instance, a police officer.

20 Q So as a result of those findings or research, what
21 happened next in terms of the creation of these policies?

22 A So of course we created a committee that actually did all
23 the research. We then used multiple forums within the medical
24 center to bring forward the ideas and seek input. As I said,
25 we used our patient and family advisory committee, which is

1 actually a committee of previous individuals who had been
2 patients. We used our strategic workforce council, which is a
3 management and staff council.

4 We used our nurse performance improvement council and our
5 nurse practice council, which are staff committees. And we
6 also used our partnership councils, which are groups of
7 multidisciplinary individuals in units to provide us input
8 feedback on the planned changes.

9 Q When you say staff committees, what do you mean by that?

10 A The committees have -- those committees are primarily non-
11 managerial. They are individuals who are actually providing
12 direct patient care.

13 Q And the registered nurses at the hospital are represented
14 by the California Nurses Association?

15 A Uh-huh, they are.

16 Q And is there another union at the hospital?

17 A There is.

18 Q What is that union?

19 A I don't know. I call them the steelworkers.

20 Q The steelworkers. All right. And do they represent
21 patient care providers as well?

22 A They do.

23 Q Okay. And so when you say "staff," would there be members
24 of both of the unions?

25 A No, the input really came primarily from professional

1 registered nurses and other professional disciplines. However,
2 those individual staff are represented on partnership councils.
3 So that would be unlicensed assistive staff, patient care or
4 assistants, certified nursing assistants, that was -- that
5 level staff is on the partnership council.

6 Q Okay. So both of these policies, GC-5 and 6, under
7 rational referred to having, in quotes, bear below the elbows,
8 could you describe what that means?

9 A Uh-huh. That means that we do not permit direct care
10 givers providing care to patients to have anything below the
11 elbow on their hands, except for a band, wedding band.

12 Q So that includes watches?

13 A That includes watches.

14 Q Bracelets?

15 A Anything.

16 Q And this also says that lanyards are not permitted?

17 A That's correct.

18 MR. BERUL: I'm going to object just because I think the
19 document speaks for itself and we're veering into areas that
20 are covered by these policies, but that are not germane to the
21 issue in the complaint. And I just don't know how far we are
22 going into this.

23 JUDGE WEDEKIND: I generally agree with the objection.
24 Again, this is true, it speaks for itself, I'm going to rely on
25 the document and not on her testimony.

1 MR. ABRAHMS: Well, I'll asking --

2 JUDGE WEDEKIND: What it says.

3 MR. ABRAHMS: -- what the rational -- that's why I didn't
4 ask her what it said, I asked -- I'm confirming.

5 JUDGE WEDEKIND: In any event, I generally agree with the
6 objection. I'm not sure of the relevance of below the elbow,
7 but it's in the record. So I'm not going to strike the
8 testimony at this point.

9 MR. BERUL: I'm not requesting that you do, I just --
10 thank you.

11 MR. ABRAHMS: The question was about lanyards, which deal
12 with badges.

13 JUDGE WEDEKIND: That's true. I think he's objecting to
14 the whole line of testimony.

15 MR. BERUL: That's what I am, yes.

16 JUDGE WEDEKIND: I was just responding to that. I
17 understand you apparently want to put in a lot of evidence
18 about all the restrictions to support your defense. I
19 understand that. I'm not sure if the level of detail is
20 necessary, but it's in the record. Let's move forward.

21 Q BY MR. ABRAHMS: You mentioned SHEA?

22 A Uh-huh.

23 Q Is that referenced on these policies?

24 A Yes, it is.

25 Q Where?

1 A Under the authority section of both of the policies, it's
2 a society for healthcare epidemiology. It's in America, but
3 the America isn't on here. And then it's also referenced in
4 the references under the reference used on healthcare personnel
5 attire in the non-operating room environment, infection control
6 and hospital epidemiology, which is from the Society for
7 Healthcare Epidemiology.

8 Q I'm going to just hand you -- to confirm whether this is
9 what is referenced there.

10 A Uh-huh. This is.

11 Q What did I -- I just marked as something Employer Exhibit
12 9. What is that?

13 A So this is the major reference we use which is the meta-
14 analysis of the literature that was completed by the Society of
15 Healthcare Epidemiology of America regarding the best practices
16 for infection control and attire outside the operating room
17 setting.

18 Q Okay. And that's the study that's referenced here?

19 A Yes.

20 Q Okay.

21 JUDGE WEDEKIND: This article is just about infection?

22 THE WITNESS: Yes, it's about attire and infection.

23 JUDGE WEDEKIND: And infection. What does a badge holder
24 clip have to do with infection, whether it has one logo on it
25 or another? That's why I don't understand the relevancy.

1 MR. ABRAHMS: Well, because we went from the lanyards.

2 JUDGE WEDEKIND: But what do we care about lanyards? I
3 don't understand.

4 MR. ABRAHMS: We spent hours yesterday talking about --

5 JUDGE WEDEKIND: I understand the policy change and there
6 is a reason you got rid of the lanyards, but the issue in this
7 case is whether there's special circumstances apparently to
8 permit the hospital to require the logo on the badge holder
9 reel to have the hospital logo, not a union logo. What does
10 that have to do with infection control?

11 MR. ABRAHMS: Well, I think the lanyards do have to do
12 with infection control.

13 JUDGE WEDEKIND: But there's no issue about lanyards in
14 this case. The issue is about whether the hospital can require
15 one logo rather than another logo on a badge reel holder.

16 MR. ABRAHMS: That is the new issue that's in this case as
17 of yesterday. But the -- and the reason why we're getting some
18 of this in --

19 JUDGE WEDEKIND: So this is about the paragraph 6
20 allegation that says that employees have to get permission?

21 MR. ABRAHMS: Well, I think the counsel for the General
22 Counsel is putting forward a more generalized argument, which
23 isn't supported by the policy itself, which is that people
24 aren't allowed to wear union insignia. Part of that yesterday,
25 I understood it to be -- and maybe I'm wrong -- was that people

1 were wearing CNA lanyards, and that wasn't an issue. And now
2 they've been moved to a badge reel that can't be a CNA badge
3 real. So you're right, there's an issue between which logo has
4 to be on the badge reel, but the larger issue -- and I think
5 what the counsel for General Counsel has to prove -- is that
6 the hospital's policies are infringing on people's rights to
7 display union insignia, which would include the lanyard and why
8 that would be included.

9 JUDGE WEDEKIND: All right. Let's talk about that. What
10 is the GC's allegation in this case? Does it go beyond just
11 the badge reel?

12 MS. PARKER: Well, I mean, we are alleging the unlawful
13 maintenance of the two rules at this point, policy 318 as well
14 as the policy 261.02, which is General Counsel's 6.

15 JUDGE WEDEKIND: Right.

16 MS. PARKER: Which on its face talks about the badge reel
17 holders and that only the MHS badge reel holders may be worn.

18 MR. ABRAHMS: Sentence directly before that says lanyards
19 are not permitted. So I understood that that was what was
20 being challenged. I mean as part -- I mean we can't -- again,
21 all of this always context related, right? So I understand
22 that counsel for the General Counsel's amendment yesterday
23 referred to only the last sentence of paragraph 12 on page 3 of
24 Exhibit 6. But the entire paragraph is the context of that
25 sentence, certainly.

1 JUDGE WEDEKIND: Okay.

2 MS. PARKER: The only -- the amendment we made only
3 alleged that final sentence, badge reels may only be branded
4 with Memorial Care approved logos or text.

5 JUDGE WEDEKIND: But, you know, there's not going to be an
6 order in this case that says the hospital can no longer
7 prohibit employees from wearing lanyards. That's just not the
8 issue in this case. There's not going to be an order about any
9 particular pin, other than perhaps the badge reel holder,
10 because that's alleged here. Right?

11 MS. PARKER: The badge reels are specifically alleged,
12 yeah.

13 JUDGE WEDEKIND: That is specifically alleged. I'm not
14 going to tell the hospital exactly what it can permit and what
15 it can't permit. I'm not going to do an analysis of that is
16 going to be an infection controlled problem. I'm really
17 concerned about this -- a lot of stuff is coming in that just
18 doesn't seem relevant to me, especially infection control.
19 Again, I'm not going to define what the badge can be, whether
20 it's two inches or one inch or where it's going to be on the
21 uniform. I think the issue is more broadly whether the
22 hospital any prohibit kind of all, and that's all I'm going to
23 be ruling on, except for the badge reel holder.

24 MS. PARKER: Badge reel holder and unlawful maintenance of
25 those two policies.

1 JUDGE WEDEKIND: Right.

2 MR. BERUL: If I may?

3 JUDGE WEDEKIND: If you want to argue that a little tiny
4 pin is going to be an infection control problem --

5 MR. ABRAHMS: That's not what we're going to argue.

6 JUDGE WEDEKIND: I didn't think so.

7 MR. ABRAHMS: No.

8 JUDGE WEDEKIND: So that's why I don't understand all of
9 this evidence.

10 MR. ABRAHMS: No, no, no, because I think that part of the
11 available defense to the employer here is that there are other
12 reasonable opportunities for employees to display a -- their
13 union insignia. You can't -- it's all context related. So if
14 the General Counsel is attacking Taco Bell's requirement that
15 you wear a Taco Bell visor, but you could still wear a Unite
16 Here pin on your lapel, I don't think that goes very far.
17 That's really what this case is about. They are focusing on
18 one part of this, when the entire policy needs to be read in
19 context because the infringement on Section 7 rights is you
20 don't have a Section 7 right to wear a specific thing. You
21 have a Section 7 right to express yourself. And I think that's
22 where the whole policy comes into play.

23 MR. BERUL: Well, if I may, I haven't had a chance to
24 weigh in, Your Honor. I clearly think that the allegation in
25 the complaint regarding the policy 318, only MHS approved pins,

1 badges and professional certifications may be worn, that is
2 something that just the reasonable employee would read and it
3 would interfere with the engagement in Section 7 rights.
4 Wherever one may assume that -- Mr. Abrahms is trying to
5 suggest that, well, this doesn't prohibit wearing a union
6 insignia somewhere else. I don't know if that is true or not.
7 But the question is: What would a reasonable employee make of
8 this language? What would the reasonable employee make of the
9 language of the badge reel? I'd just like to stress that I
10 think this maintenance of the policy in 6A certainly would
11 encompass far beyond the badge reel, to the reasonable
12 employee, when it talks about pins and badges. Specifically
13 with the amendment to the complaint, yet that goes specifically
14 to badge reels. But otherwise, we had testimony from the
15 General Counsel witnesses that seemed to be in accord with the
16 concerns about the lanyards yesterday. I don't know why we're
17 going down this track.

18 JUDGE WEDEKIND: I don't see any reason to allow Exhibit 9
19 in. I don't understand why we're putting in studies about
20 infection control in this case. I mean, there is no challenge
21 for her testimony. There's no -- no one is going to come up
22 here and testify that infection control is not an issue at the
23 hospital.

24 MR. ABRAHMS: Your Honor, for the first time yesterday we
25 found out they're challenging the policy. This policy itself

1 was based on, in large part, on that study. I understand what
2 you're saying. But as a result of having to respond to the
3 last-minute amendment, we want to make sure the record is clear
4 that there was basis for it. I understand that. We can move
5 on. And if they want to object to admission of Exhibit 9 --

6 JUDGE WEDEKIND: Let's look at that policy that we're now
7 alleging is unlawful. What's the exhibit Number on that again?

8 MR. ABRAHMS: GC6.

9 JUDGE WEDEKIND: Okay. It's number 12? What number is
10 it?

11 MR. ABRAHMS: Yes. 12, the last sentence of paragraph 12,
12 is my understanding of what was amended yesterday.

13 MS. PARKER: Yes, badge reels may only be branded with
14 Memorial Care approved logos and text.

15 JUDGE WEDEKIND: You're saying that rule was adopted
16 because of an infection control study?

17 MR. ABRAHMS: Well, the sentence right before it, lanyards
18 are not permitted.

19 MR. BERUL: We don't dispute that.

20 JUDGE WEDEKIND: Okay. I get it now. Okay. So that's
21 why you got rid of lanyards. Fine. But lanyards is not the
22 issue in this case, and I'm not going to issue an order saying
23 anything about lanyards. The order is not going to address
24 lanyards. And there is no dispute in this case that the
25 lanyards, they got rid of them because -- partly for infection

1 control problems.

2 MR. ABRAHMS: Okay. All right. So I assume, just to
3 shortcut this and make sure the record's clear. We would move
4 to have Exhibit 9 admitted. I assume Counsel for General
5 Counsel, Charging Party Counsel would object and then Your
6 Honor, would --

7 JUDGE WEDEKIND: Do you object or not?

8 MS. PARKER: Yes, we would object based on relevance,
9 based on the discussion that we just had.

10 JUDGE WEDEKIND: All right. Okay.

11 MR. BERUL: Same objection.

12 JUDGE WEDEKIND: I sustain the objection.

13 MR. ABRAHMS: Okay.

14 **(Employer Exhibit Number 9 Rejected)**

15 Q BY MR. ABRAHMS: So ultimately these policies -- what do
16 these two policies -- well, first I keeping talking them
17 together (sic). General Counsel Exhibit 5 and General Counsel
18 Exhibit 6. Were they related to one another?

19 A Yes, they are related.

20 Q Okay. And when were -- when did they become effective?

21 A They -- the policies were approved in October of 2014.
22 And they became effective for registered nurses on December
23 1st, 2014.

24 Q Okay. And was there communication with the bargaining
25 unit before that about what the new changes would be?

1 A When you say bargaining unit, what does that mean?

2 Q With the nurses?

3 A Yeah. Yes, there was communication with the nurses over a
4 period of time. Not only the input phase, but then when the
5 actual approval phase happened, there was communication about
6 the implementation of the policy and of course the ordering of
7 the uniforms had to happen at the same time.

8 Q There was some discussion yesterday about the new uniforms
9 having a piece of fabric or something on the right hand side
10 for the badge reel.

11 A For the badge, right.

12 Q Okay.

13 A It can be for the badge reel or the bad directly.

14 Q Or for the -- you can use the plain metal plastic clip.

15 A Yes.

16 Q Okay. Was that -- how did that come about? Was that
17 normal for that to be on a uniform like that?

18 A No, that was specifically designed to be placed on the
19 uniform so that there was a standard place where the badge
20 should reside on the uniform or was to reside on the uniform.

21 Q Okay.

22 A So the badge became part of the actual uniform.

23 Q One second. Was there also any effort to -- you said
24 watches were not allowed. Was there any discussion about how
25 to hand issues with watches?

1 MR. BERUL: Objection to relevancy, on relevancy grounds.

2 JUDGE WEDEKIND: Discussions about watches?

3 MR. ABRAHMS: They become part of the badges, what we'll
4 end up putting in the --

5 JUDGE WEDEKIND: The watches will become part of the
6 badges?

7 MR. ABRAHMS: Yes.

8 JUDGE WEDEKIND: Okay. Overruled.

9 THE WITNESS: So --

10 JUDGE WEDEKIND: Was there discussion?

11 THE WITNESS: So there was discussion about, yes, how to
12 provide -- or with input from staff, the registered nurse or
13 other caregivers, not just registered nurses, were interested
14 to have a method of being able to tell time with a second hand
15 that do not rely on the clock in the room.

16 Q BY MR. ABRAHMS: Okay. I'm going to hand you something
17 we'll mark as Employer Exhibit 10.

18 **(Employer Exhibit Number 10 Marked for Identification)**

19 Q BY MR. ABRAMS: How -- what did you guys come up with in
20 terms of how to deal with watches for telling the time?

21 A Well, we decided that our -- the group, the team decided
22 to offer a watch log to the staff.

23 Q Okay. And was this specially designed as well?

24 A Yes, it was specially designed as well.

25 Q Okay. And how would this work with -- in conjunction with

1 the badge?

2 A As you can see, it can be affixed to the back of the badge
3 on the plastic clip that is provided with the plastic badge
4 cover.

5 Q Okay. And again, I'll hand these to -- and so when you're
6 saying -- you're looking at Employer Exhibit 10 and pointing to
7 the -- that's the actual clock that was used or the watch?

8 A Yes.

9 Q Okay.

10 A That's the actual watch that's offered.

11 Q And then it's -- and just so everybody here can --

12 A Uh-huh.

13 Q -- can look at it. I just handed you a watch, a badge
14 watch --

15 A Uh-huh.

16 Q -- for lack of a better term. And is this the -- is this
17 what was provided to the nurses?

18 A Well actually initially, a smaller one was provided. But
19 the nurses had trouble seeing the time, so we made a slightly
20 larger clock.

21 Q Okay. So this is the current one.

22 A This is the current one that's provided --

23 Q Okay.

24 A -- or offered.

25 Q And what is Employer Exhibit 10? What was this flyer for,

1 if you remember?

2 A Well, we had changed or we had -- we continued to improve
3 and upgrade both the reel and the watch, based on input. And
4 this is announcing that they were available to staff.

5 Q Okay.

6 MR. ABRAHMS: I'll ask that Employer Exhibit 10 be
7 admitted.

8 MS. PARKER: No objection.

9 MR. BERUL: I object just on relevancy, because this does
10 not go to the issue of the case. There's no statutory
11 protection for the watch. We're not -- I don't see how it ties
12 in to the theory here. It happens to mention badge reel and
13 watch in the same flyer, so to that extent --

14 JUDGE WEDEKIND: I'm going to --

15 MR. BERUL: -- I don't see it as --

16 JUDGE WEDEKIND: Yeah.

17 MR. BERUL: -- you know -- I -- just for the -- at least
18 for the record --

19 JUDGE WEDEKIND: Yeah. I -- it does discuss the badge
20 reel. It looks like they were announced at the same time. I'm
21 not sure if that's true, but I'm going to overrule the
22 objection, because it does discuss the badge reel. It's
23 received.

24 **(Employer Exhibit Number 10 Received into Evidence)**

25 Q BY MR. ABRAHMS: In terms of -- under the new policy, what

1 kind of badge reels can be worn?

2 A I believe it's --

3 JUDGE WEDEKIND: What policy are you looking at?

4 THE WITNESS: -- badge reels may be --

5 JUDGE WEDEKIND: What are you looking at?

6 THE WITNESS: I'm looking at --

7 JUDGE WEDEKIND: What's the CG number --

8 THE WITNESS: -- the policy --

9 JUDGE WEDEKIND: -- at the bottom?

10 THE WITNESS: -- PC261.02.

11 JUDGE WEDEKIND: What's the GC number at the bottom of the
12 page?

13 THE WITNESS: Oh, I'm sorry, 6.

14 JUDGE WEDEKIND: GC-6.

15 THE WITNESS: Okay? I'm looking at page 3 of 3. And I'm
16 looking at 12.

17 JUDGE WEDEKIND: You don't need to read it.

18 THE WITNESS: Okay.

19 JUDGE WEDEKIND: Is that the policy?

20 THE WITNESS: Yes.

21 JUDGE WEDEKIND: Okay.

22 Q BY MR. ABRAHMS: And so are there specific uniform reels
23 that are being provided to employees?

24 A Ye.

25 Q Okay. How many versions of the reels are employees

1 allowed to wear under this policy?

2 A Pardon me?

3 Q How many different -- is there more than one reel that an
4 employee is allowed to wear? Or did you have multiple versions
5 of the reel?

6 A We did have multiple versions of the reel. Not the
7 insignia on the reel, but the reel itself.

8 Q Okay. So the -- so all of the reels contained the same
9 insignia?

10 A Yes.

11 Q Which would have been the one that we looked at earlier
12 today --

13 A Yes.

14 Q -- in the picture? Okay. What happened? Why were there
15 multiple --

16 A Right.

17 Q -- versions of the reel?

18 A The first reel -- based on input from staff. The first
19 reel was heavy. And it caused some staff members -- it would
20 pull off or it would rip the little tag that it was supposed to
21 be affixed to. So we then had a lighter reel created. And
22 that reel ended up being the string that comes out, turned out
23 to sometimes snap or break. So then we had a third reel
24 created that had a stronger, I guess you would call it string
25 attached. I don't know what it's called. But yes. Three. So

1 we're on the third reel.

2 Q Okay. But all of them had the same logo?

3 A Yes.

4 Q Okay.

5 A Same insignia.

6 Q Are all three of those reels still permitted to be worn?

7 A Yes.

8 Q But they must have that Memorial Care standard logo that
9 was shown in GC's Exhibit 8?

10 A Yes. It must have a Memorial Care approved logo.

11 Q Okay. And in terms of the -- there were a number of other
12 changes associated with this policy other than just the badge
13 reel, correct?

14 A Yes.

15 Q Okay. I don't want to go into all of them. But lots of
16 changes that were required for employees.

17 A Yes.

18 Q And can you describe the rollout, the communication to the
19 employees, how you started to --

20 A Well, of course --

21 Q -- ensure this policy was implemented?

22 A Uh-huh. Once it was implemented, it rolled out, of
23 course, through distribution of the policy to staff, discussion
24 at staff meetings. I now that our human resources department
25 met directly from the California Nursing Association. And so

1 the usual -- actually, through the usual processes and channels
2 we use to bring out a new policy and procedure.

3 Q Okay. And I think you said it started on December 1st,
4 2014?

5 A Yes. For registered nurses.

6 Q Okay. And how long did it take for you to get the badge
7 reel right, so that it wasn't breaking or it wasn't too heavy
8 or whatnot?

9 A I don't -- I'm not really -- sometime in March maybe of
10 2015.

11 Q Okay.

12 A March or April.

13 Q Okay. And were there flyers or communications out to
14 employees letting them know that the change was coming?

15 A Yes.

16 Q I'll hand you something we'll mark as Employer 11 and 12.
17 Let me know if you --

18 **(Employer Exhibit Number 11 and 12 Marked for Identification)**

19 JUDGE WEDEKIND: Thank you.

20 Q BY MR. ABRAHMS: -- recognize either of those.

21 A Yes, I recognize both of them.

22 Q And these both have dates on them, but --

23 A Uh-huh.

24 Q -- Exhibit 11 says October 13, 14 and 15. Do you know
25 what year that would have been?

1 A That would have been 2014.

2 Q And the other one says November 11th. Would that also
3 have been 2014?

4 A Yes.

5 Q Okay. And I'll hand you one more that we're going to mark
6 as Employer Exhibit 13.

7 **(Employer Exhibit Number 13 Marked for Identification)**

8 Q BY MR. ABRAHMS: This one also says Monday, December 1st.
9 Would that have -- what year would that have been?

10 A 2014.

11 Q And this refers to -- does this refer to the badge holder
12 or the badge reel?

13 A It does refer to the badge reel.

14 Q Okay.

15 MR. ABRAHMS: I'll ask that Employer's 11, 12 and 13 be
16 admitted.

17 MR. BERUL: I object to the relevancy of 11 and 12 for the
18 union, because they've got no mention, unless I'm missing it,
19 of anything to do with the badge reels. And again, there's no
20 dispute that there was a change in the uniform policy. The --
21 there was testimony from GC's witness yesterday on that. I
22 think that 13 is -- it -- I personally find it lacking of
23 relevance, too. It does mention badge holder, but I still
24 don't see it as relevant that the hospital is supplying one.
25 So I would object to all three, but in particular, 11 and 12.

1 JUDGE WEDEKIND: Well, 13's overruled. I'll overrule on
2 13. That's coming in.

3 **(Employer Exhibit Number 13 Received into Evidence)**

4 JUDGE WEDEKIND: There is no dispute about the new
5 uniforms, so what is the point of 11 and 12?

6 MR. ABRAHMS: Well, honestly, Your Honor, some of this is
7 going to go to the fact that there was an amendment to the
8 complaint and the union was very, very well aware of this as
9 this as should the General Counsel have been, over a year
10 before -- a year and a half before the amendment.

11 MR. BERUL: That's not true, first of all. And secondly,
12 this is an unlawful rule allegation, where 10B is not in play,
13 Mr. Abrahms.

14 JUDGE WEDEKIND: Well, this is focused on the -- but the
15 flyers don't say anything about what badges are allowed, does
16 it? Do they? I mean, the new allegation just goes to the
17 rules saying only approved badges or something to that effect.
18 It doesn't say anything about the uniform itself, right? The
19 portion that's being alleged as unlaw --

20 MR. ABRAHMS: You're correct, Your Honor.

21 JUDGE WEDEKIND: Okay.

22 MR. ABRAHMS: There's no discussion of the badge reels
23 there.

24 JUDGE WEDEKIND: Look, I'm going to allow them in just for
25 now. But I -- the point is that, you know, if something's not

1 disputed, we don't need to put documents in to prove it.

2 Eleven, 12 and 13 are received.

3 **(Employer Exhibit Numbers 11 and 12 Received into Evidence)**

4 Q BY MR. ABRAHMS: You were mentioned there were -- there --
5 in addition to the direct employee communications, there was
6 communications directly with the union?

7 A I believe our human resource met with the California
8 Nursing Association.

9 Q Do you know whether or not they were provided copies of
10 what are now Exhibit 4 and 5 -- I'm sorry, 5 and 6. General
11 Counsel's 5 and 6, before they were implemented?

12 A Yes. I was informed that they were provided copies.

13 Q Okay.

14 MR. BERUL: I'm going to object on the hearsay answer and
15 ask that it be stricken from the record.

16 JUDGE WEDEKIND: Yes. Okay.

17 MR. BERUL: She was --

18 JUDGE WEDEKIND: Can you provide some foundation for that
19 answer?

20 Q BY MR. ABRAHMS: How do you know that?

21 A I know that, because I discussed it with the individual
22 who meeting with the California Nursing Association. The
23 individuals.

24 MR. BERUL: Still hearsay. And it's still irrelevant,
25 because we're looking at an unlawful rule that continues to be

1 enforced and 10B is not an issue.

2 MR. ABRAHMS: I'll withdraw. I can -- move with another
3 witness.

4 JUDGE WEDEKIND: Okay. It's withdrawn.

5 MR. BERUL: And it's not a bargaining case. Again, as I
6 mentioned yesterday.

7 JUDGE WEDEKIND: Just for the record, there's no dispute
8 -- there's no contention that these rules were collectively
9 bargained with the union and approved by the union, is there?
10 The rules that are at issue alleged as unlawful?

11 MR. ABRAHMS: I don't believe that there is, but I also
12 didn't believe the rules were an issue --

13 JUDGE WEDEKIND: Okay.

14 MR. ABRAHMS: -- 40 hours ago.

15 JUDGE WEDEKIND: Okay. There's no contention that they
16 were collectively bargained or agreed to by the union.

17 MR. BERUL: Mr. Abrahms has already raised history of
18 charges. We had issues with --

19 JUDGE WEDEKIND: I understand --

20 MR. BERUL: -- policies in ge -- yeah --

21 JUDGE WEDEKIND: We don't need to --

22 MR. BERUL: -- we don't have to get --

23 JUDGE WEDEKIND: -- into the history.

24 MR. BERUL: -- rehash what ha -- yeah, it's on the record
25 from yesterday. Yeah. Yeah.

1 JUDGE WEDEKIND: Okay. Okay.

2 Q BY MR. ABRAHMS: The policy became effective December 1st
3 and you started to roll it out. How long did take, the full
4 rollout of the policy as you worked it through different folks?
5 Well let me backup.

6 A No, I'm sorry. It was implemented on December 1st.

7 Q Okay. So describe for me what happened after December 1st
8 and how long you felt it took to kind of take hold?

9 A Well, we made a decision to imple -- do a soft
10 implementation of the policy, because it was such a big change.
11 And there were changes in multiple categories for the
12 employees. So think for like the first two months, we gave
13 reminders and just generally talked to employees about you
14 know, don't forget. These are the new policies. And then
15 after that, you know, we have taken an approach where we in
16 management specifically discuss with an employee if we find
17 that they are not in compliance with the uniform.

18 Q Okay. And your testimony just now, is that with respect
19 to any of the issues with the uniforms --

20 A Yes.

21 Q -- or compliance?

22 A Yes.

23 Q So bare below the elbows.

24 A Right.

25 Q The jewelry --

1 A Right.

2 Q -- hair, anything.

3 A Yeah. It could be on any of those fronts.

4 Q Okay. And so to this date, are you aware of any of your
5 managers disciplining somebody for violating the badge reel --

6 MR. BERUL: Objection --

7 Q BY MR. ABRAHMS: -- aspect of the policy?

8 MR. BERUL: Objection. Relevancy. There's no 8A3 in the
9 complaint.

10 JUDGE WEDEKIND: Just tell me -- say the question again.

11 MR. ABRAHMS: I asked her if she was aware of anybody
12 being disciplined for the badge reel. And the purpose is that
13 there is a disparate treatment. So if -- allegation. And so
14 if the treatment has been the same for everybody --

15 MR. BERUL: Disparity enforcement, not disparate treatment
16 in terms of --

17 MR. ABRAHMS: Disparate enforcement.

18 JUDGE WEDEKIND: Yeah.

19 MR. ABRAHMS: -- in terms of discipline. Nobody,
20 fortunately, has been disciplined.

21 JUDGE WEDEKIND: Well, overruled. Can you answer the
22 question?

23 THE WITNESS: Okay I believe that we have used primarily
24 coa -- we have used coaching.

25 Q BY MR. ABRAHMS: Okay. And for the record, when you say

1 coaching, what does that mean?

2 A That means an individual discussion with the employee, a
3 reminder. I -- we have not needed to enter the progressive
4 discipline process with an employee.

5 Q Okay. And would that approach remain true regardless of
6 the technical violation of the new policy?

7 A Could you restate your question?

8 Q Sure. With the coaching approach, is that consi -- are
9 you doing that regardless of how the policy's violated?

10 A Yes.

11 Q Okay.

12 A We're using the coaching approach at this time.

13 Q Have you personally ever seen anybody with the badge reel
14 not being the uniform hospital badge reel?

15 A I have not personally seen a non-uniform badge reel.

16 Q Okay. Have you seen other aspects of -- out of --

17 A Yes.

18 Q -- compliance?

19 A Yes, I am.

20 Q For --

21 A Yeah.

22 Q -- can you give me some examples?

23 A Sure. Well, I -- typically in the patient care units
24 between 2:00 and 3:00 is when I do rounds. So as I round, I
25 observe and interact with staff members. And I primarily have

1 dealt with bare below the elbows, not the appropriate uniform
2 jacket on an employee, would have been the two primary issues
3 that I've coached people about.

4 Q Okay. There was some testimony by a nurse named Elizabeth
5 Castillo earlier today. Do you know her?

6 A Yes, I do.

7 Q Did you ever have an interaction with her related to the
8 uniform?

9 A Yes, I did.

10 Q What was that?

11 A I was rounding in the unit where she was working as a
12 caregiver and she did not have on the appropriate jacket. She
13 had a noncompliant uniform jacket on. And I discussed it with
14 her and asked her to please make sure she complied in the
15 future.

16 Q And there is a uniform jacket for each RN? Or for not
17 each RN. For RNs?

18 A Yes.

19 Q And --

20 A Multiple.

21 Q -- and what does that -- does that jacket have -- well,
22 let's backup a little bit. If you can look at General
23 Counsel's Exhibit 6, which is -- yeah, the policy. Oh, I'm
24 sorry. Five. On the second page of five --

25 A Yes.

1 Q -- under two, there's a bunch of different classifications
2 under discipline and then colors on the right.

3 A Yes, there is.

4 Q Did each of those disciplines get their uniforms at the
5 same time?

6 A No.

7 Q Okay. So RNs started before everybody else?

8 A Yes, RNs started -- RNs and emergency department
9 technicians.

10 Q Okay. And which of the groups were the last?

11 A The last group was -- well, it was the pharmacist, the
12 technologist, the respiratory care practitioners and the
13 therapists.

14 Q Okay. And when do you recall that being?

15 A I believe they went June 1st, 2015.

16 Q Okay. So not everybody even had their uniforms until the
17 end of -- until June?

18 A Until June.

19 Q Okay. Now with respect to the RN jackets -- well, let me
20 back up again. Do each of these disciplines have something
21 displayed on the left side of their uniform in terms of --

22 A Yes.

23 Q -- what the discipline is?

24 A Yes. It's standard.

25 Q Okay. So no matter what your discipline is, there's some

1 indication of what that is on your left hand side of your --

2 A Yes.

3 Q -- your scrub.

4 A That is a standard.

5 Q Okay. Now in terms of the jackets, the -- are the jackets
6 unif -- discipline specific as well?

7 A The jackets are, yes.

8 Q Okay. So do RNs have a specific colored jacket that they
9 can wear?

10 A Yes, they have a specific colored jacket that matches
11 their scrubs. And it has the same insignia for their
12 professional discipline.

13 Q So it would still say RN on the outside?

14 A Still has the Memorial Care logo and RN.

15 Q Okay. And are they supposed to -- if I'm wearing a
16 jacket, what am I supposed to do with my badge? Do I keep my
17 badge inside the jacket or --

18 A You -- the badge is typically inside the jacket.

19 Q Okay. And are they allowed to walk into a patient room
20 with the jacket on?

21 A No.

22 Q Okay. Earlier in this hearing, there's been some
23 testimony about badge reel and badge -- pins that were placed
24 on badges that have cartoon characters or similar personal
25 items. Is that permitted under the appearance policy?

1 A No.

2 Q Is it possible that some of the 6,000 employees are not in
3 compliance with the policy?

4 A It could be, yes.

5 Q And why is that?

6 A Well, there are 6,000 employees. In patient care
7 services, there are about 3,800 employees. And you know,
8 usually, it does say in the policy that peers are supposed to
9 be helpful in maintaining the standard, uniform standard.
10 However, it tends to fall to management. And the management to
11 staff ratio is quite large.

12 Q Okay. Finally, looking at General Counsel's Exhibit 6.
13 If a nurse was -- are you familiar with skills day?

14 A Yes.

15 Q What is skills day?

16 A Skills day is -- we have multiple skills days in the
17 spring of each year. And it's to comply with competency
18 validation on skills necessary for a registered nurse to be
19 competent at the bedside to care for her patient or their --
20 his or her patient.

21 Q Are nurses required to be in uniform on skills day?

22 A No.

23 Q Okay. So if they're not required to be in uniform or
24 they're not providing direct patient care that day, do they
25 have to -- does the badge reel requirement apply to them?

1 A The badge real requirement would not apply to them on that
2 day.

3 Q Okay. If they were working, could a nurse wear -- well,
4 the jacket requirement is required wear. I mean, do they have
5 to wear it in the parking lot, or can they wear it -- can they
6 wear an overcoat over their jacket --

7 A Yes --

8 Q -- in the parking lot?

9 A -- they definitely can wear an overcoat. So the jacket is
10 to help them stay warm when they're in the direct care area.

11 Q When they're in a --

12 A The patient care unit.

13 Q Okay. If they wanted to wear a union jacket until they
14 got to the unit, they could do that?

15 A Yes.

16 MR. BERUL: I object on the relevancy. We're not
17 disputing whether the union jackets are allowed. And there's
18 no disputes about the Employer jacket. And I don't know where
19 this line of questioning is going.

20 JUDGE WEDEKIND: So where does this demarcation line start
21 where they have -- they can't wear the union jacket anymore?

22 THE WITNESS: Well, when they are ready to work starting
23 their shift, they would be in standard uniform.

24 JUDGE WEDEKIND: And where would they be ready to start
25 their shift?

1 THE WITNESS: They would be ready to start their shift on
2 their patient care unit in the direct care area.

3 JUDGE WEDEKIND: So up until they walk through that door
4 on the floor --

5 THE WITNESS: Uh-huh.

6 JUDGE WEDEKIND: -- they can -- okay.

7 THE WITNESS: Up until 7:00 a.m., when they start their
8 shift.

9 JUDGE WEDEKIND: Okay. And so what is the allegation in
10 this case? Is the allegation that the hospital -- does it only
11 apply to the patient care area on the floor where they work, or
12 does it apply to the whole hospital?

13 MS. PARKER: Well, our understanding from the Policy
14 261.02 is that it refers to direct patient -- employees who
15 provide direct patient care. That was our understanding with
16 respect to Policy 318 as well.

17 JUDGE WEDEKIND: But the GC --

18 MS. PARKER: There's --

19 JUDGE WEDEKIND: -- the GC's position, though is that the
20 hospital cannot prohibit employees from wearing a badge holder,
21 union badge holder or --

22 MS. PARKER: Badge reels.

23 JUDGE WEDEKIND: -- other -- any other union insignia in
24 the patient care area.

25 MS. PARKER: Correct. But it should be evenly enforced.

1 So if employees are allowed to wear that type of hospital
2 issued insignia, they should be allowed to wear the union
3 insignia as well.

4 MR. BERUL: Well, if I may clarify.

5 MS. PARKER: Yeah.

6 MR. BERUL: I think that the allegation goes beyond the
7 patient care area. It's talking about -- my point was as to
8 what's at issue here in the complaint. We're talking about
9 -- if we're talking about approved pins and badges. And --

10 MS. PARKER: And professional certification.

11 MR. BERUL: And professional certifications. And then
12 we've added in specifically the badge reel holders based on
13 what came in --

14 MS. PARKER: Right.

15 MR. BERUL: -- pursuant to the subpoena. And in -- with
16 the disparate enforcement allegations, whichever policy it's
17 coming from. And you know, it's not going to -- we haven't put
18 any evidence either one of us in the case in chief concerning
19 union jackets. So I just -- it's kind of -- I don't know --

20 JUDGE WEDEKIND: Let me interrupt. You know, all the
21 testimony yesterday, my recollection is that it only dealt with
22 patient care areas. Is that a correct statement? All the
23 testimony related to -- I was told in a patient care area while
24 I was working that I had to do this or that. Isn't that
25 basically what the testimony was about? There was nobody --

1 there was no testimony about whether they had to --

2 MS. PARKER: While employees were offsite and --

3 JUDGE WEDEKIND: Right. The parking lot or --

4 MS. PARKER: That's correct.

5 JUDGE WEDEKIND: -- you know, coming into --

6 MS. PARKER: The incidents --

7 JUDGE WEDEKIND: -- the lobby or anything else. So it
8 seems to me the whole focus of this case has been that -- your
9 contention is that the hospital -- that even six -- I mean,
10 based on the testimony that I've heard, even 6A, the whole
11 focus is that, you know, the hospital can't require prior
12 approval in patient care areas. And you know, based on what
13 I've heard so far, that's what my decision's going to address.

14 MS. PARKER: Is based on the patient care area.

15 JUDGE WEDEKIND: Yeah.

16 MS. PARKER: Well, I --

17 JUDGE WEDEKIND: Because isn't that the -- I mean, that's
18 the tough issue, right?

19 MS. PARKER: Correct. And --

20 JUDGE WEDEKIND: Nobody's talking about the cafeteria or
21 anywhere else in the hospital.

22 MS. PARKER: I believe with the policies themselves and
23 the maintenance of the policies as far as those are concerned,
24 they may -- it may be more general in these policies. I don't
25 know that they specifically limit it as to the outside areas of

1 the hospital or non-patient care areas.

2 MR. BERUL: If I may, Your Honor. I know it's the GC's
3 case, but again, as I mentioned yesterday, I think the
4 complaint spells it out. These policies are facially unlawful
5 and do not restrict themselves to patient care areas. The
6 examples that came up yesterday, I can't recall certainly
7 whether they were all patient care areas, but the Employer's
8 also not free to selectively disparately enforce certainly
9 immediate patient care areas even, let alone regular patient
10 care areas.

11 So we've got the broader -- as I understand that complaint
12 reading it, allegations that, you know, that these rules are
13 unlawful just with regard to anywhere in the hospital, because
14 not limited (sic). The badges -- wherever, you know, badges
15 would have to be worn, that would apply to 6B. And then with
16 6A, it's incredibly broad and could be interpreted as to
17 anything anywhere to the reasonable employee. So I don't see
18 that -- I just want to make that clear for the record from the
19 union's perspective, the limitation.

20 JUDGE WEDEKIND: The currently policy that's reflected in
21 GC-6 that you were referring to earlier. Does number 12, does
22 that apply to all employees, not just RNs?

23 THE WITNESS: So, the broader policy -- badge reel may be
24 -- with Memorial Care -- this applies to direct care providers.

25 JUDGE WEDEKIND: Okay. And so basically anyone who's on

1 the floor.

2 THE WITNESS: Yeah.

3 JUDGE WEDEKIND: Is that a correct --

4 THE WITNESS: Yeah.

5 JUDGE WEDEKIND: -- hospital floor that deals --

6 THE WITNESS: Yeah, also --

7 JUDGE WEDEKIND: -- with patients.

8 THE WITNESS: -- called a ward. It's an old term, but
9 yeah.

10 JUDGE WEDEKIND: Okay.

11 THE WITNESS: If you're --

12 JUDGE WEDEKIND: All right. But not the blood do --

13 THE WITNESS: These individuals --

14 JUDGE WEDEKIND: But not the -- is it -- but not the blood
15 donor area. Not the --

16 THE WITNESS: Right, because that is not -- the blood
17 donor area is not under the patient care services.

18 JUDGE WEDEKIND: Okay.

19 THE WITNESS: It's under the laboratory. But these would
20 be the individuals in five.

21 JUDGE WEDEKIND: Well, you have the rules and then you
22 have the disparate, the paragraph seven allegations. The
23 paragraph seven allegations -- my understanding of the
24 testimony was that it arose on patient care area, right?

25 MS. PARKER: Those incidents arose in --

1 JUDGE WEDEKIND: Okay.

2 MS. PARKER: -- in patient --

3 JUDGE WEDEKIND: And then you have --

4 MS. PARKER: -- care areas.

5 JUDGE WEDEKIND: -- these two rules. So what's your
6 theory as to 6A?

7 MS. PARKER: So as to 6A, I would say that the policy is
8 more general than that and it actually -- in its purpose, it
9 says it applies to standards of appropriate dress, appearance,
10 grooming for those who work or volunteer at Memorial Health
11 Services facilities, including offsite clinics and satellite
12 work locations at all times to mem --

13 JUDGE WEDEKIND: And is it your policy that that policy no
14 longer exists, the company's position?

15 MR. ABRAHMS: No. Our policy would be that that is the
16 general policy that is -- it's -- it can be superseded. And
17 this -- and in this case, was superseded for patient care
18 providers.

19 JUDGE WEDEKIND: So it no longer exists for patient care
20 providers.

21 MR. ABRAHMS: Well, it -- to the extent that it -- that
22 this conflict with that. That -- I'm sorry. That Exhibit 5 or
23 6, GC's 5 or 6 is more specific or conflicting, then it would
24 control.

25 JUDGE WEDEKIND: Okay. Well, that's -- I guess --

1 MR. ABRAHMS: And --

2 JUDGE WEDEKIND: -- it's up to you to show that, but you
3 -- okay.

4 MR. ABRAHMS: And Exhibit 4 is the general policy. And I
5 can draw down a little bit more. But Ms. Fix testified that
6 this would be what would apply to --

7 JUDGE WEDEKIND: Okay.

8 MR. ABRAHMS: -- patient care providers.

9 JUDGE WEDEKIND: All right. And how about 6B? Your
10 position is that that rule as well as --

11 MS. PARKER: Well --

12 JUDGE WEDEKIND: I -- basically, are -- is your brief
13 going to argue that this rule is unlawful in part because it
14 applies -- there's no limitation about what parts of the
15 hospital it applies to? That's what I'm trying to get at.

16 MS. PARKER: Well, not -- I mean, more focused on the
17 prohibition, on the wearing of the insignia. Yeah. And the
18 discretion that it gives the Employer as to wheth -- you know,
19 whether or not certain insignia should be worn. But it does
20 appear that it applies, again, to offsite clinics, satellite
21 work locations.

22 THE WITNESS: Offsite clinics would be direct care areas.

23 MS. PARKER: Okay. What about satellite work locations?

24 THE WITNESS: If it has direct care going on there.

25 MR. ABRAHMS: And I think she's focusing on the purpose.

1 The scope is --

2 THE WITNESS: Uh-huh.

3 MR. ABRAHMS: -- is fairly clear that it is talking about
4 from -- who work in any capacity in providing direct patient
5 care, including but not limited to. And then later on it talks
6 about if you're there for another meeting --

7 THE WITNESS: Uh-huh.

8 MR. ABRAHMS: -- or something, it doesn't apply.

9 JUDGE WEDEKIND: Listen, I -- this all started because she
10 was testifying about the jackets, when they can wear them, when
11 they can't. And so, based on all this, it might be relevant.
12 I mean, if the testimony is that the rules really only apply in
13 the patient care area, then that kind of narrows it down,
14 doesn't it? For briefing purposes and the allegations and
15 everything else, so --

16 MR. BERUL: Well, I would respectfully disagree, Your
17 Honor. I think that the rules speak for themselves.

18 JUDGE WEDEKIND: Well, but they may not say. I mean, does
19 the rule say?

20 MR. BERUL: Well, as Ms. Parker was just reading the dress
21 code policy where the language concerning that all -- only MHS
22 approved pins, badges and professional certifications may be
23 worn --

24 JUDGE WEDEKIND: Well, the only issue --

25 MR. BERUL: -- is --

1 JUDGE WEDEKIND: -- here is whether it's relevant
2 testimony. And I think -- I understand you're saying that the
3 rule itself on the face of it, could be ambiguous or whatever,
4 could reasonably be read, et cetera, right? To --

5 MR. BERUL: Absolutely. I just wanted to make sure with
6 what you said that you --

7 JUDGE WEDEKIND: I see.

8 MR. BERUL: -- I may be misunderstood --

9 JUDGE WEDEKIND: All right.

10 MR. BERUL: -- where you were going.

11 JUDGE WEDEKIND: Okay. I understand.

12 MR. BERUL: Okay.

13 JUDGE WEDEKIND: May I did overstate it then.

14 MR. BERUL: My apology if --

15 JUDGE WEDEKIND: No, I got it.

16 MR. BERUL: -- misunderstood, yeah.

17 JUDGE WEDEKIND: Okay. Well, you know, in light of this
18 whole discussion, I'm going to allow the testimony. That's the
19 bottom-line.

20 MR. BERUL: Okay.

21 JUDGE WEDEKIND: Okay?

22 MR. ABRAHMS: Okay.

23 Q BY MR. ABRAHMS: So, Ms. Fix, so just to clarify. A nurse
24 could wear a non-uniform insignia jacket with a union insignia
25 anytime they weren't on the patient care floor?

1 A Yes.

2 Q Would that include if they were on their break in the
3 break room?

4 A Yes.

5 Q Okay. And when they're on the patient care floor under
6 these policies, all three that we've been talking about today,
7 would anything prohibit them from wearing a California Nurses
8 Association non-dangling earring?

9 A No.

10 Q Would anything prohibit them from wearing a California
11 Nurses Association non-dangling necklace?

12 A No.

13 Q Would anything prohibit them from wearing -- from having a
14 visible California Nurses Association tattoo on their forearm?

15 A We really discourage tattoos, but you could have a tattoo
16 on your forearm.

17 Q Okay. You don't discourage CNA tattoos any more than --

18 A No.

19 Q -- any other tattoo, do you?

20 A Right.

21 Q What about nail polish? There's a section here about nail
22 polish. I'm looking at GC Exhibit 6 --

23 A Uh-huh.

24 Q -- paragraph 8. Talks about fingernails being clean and
25 so forth. And at the end, it says nail polish, if worn, should

1 be well maintained. I assume you can't have any kind of
2 jewelry or anything on your fingernails. Sometimes I've seen
3 women do that.

4 A It permit -- it specifically states we can't do that.

5 Q Okay. But in terms of the paint itself, could it -- my
6 daughter, once, you know, had --

7 A Uh-huh.

8 Q -- painted different letters on their fingernail. Would
9 that be okay?

10 A Unfortunately, yes.

11 Q Okay.

12 A It would be okay.

13 Q And do any of these rules -- or does any other rule that
14 you're aware of at the hospital explicitly prohibit any type of
15 union insignia?

16 A No.

17 Q Okay. Now --

18 MR. BERUL: I'm going to object to the question, because
19 the -- again, as to the relevancy, the document speaks for
20 itself as to what the reasonable employee would understand the
21 policy to read. Not what a high level manager thinks of it
22 herself. I mean, that's --

23 JUDGE WEDEKIND: Overruled.

24 MR. BERUL: Okay.

25 Q BY MR. ABRAHMS: Did you answer the question?

1 A I believe, but you can restate.

2 Q Do any rules of the hospital, including the three we've
3 been talking about, prohibit union insignia in particular,
4 versus any other kind of insignia?

5 A No.

6 Q And does the hospital view the actual badge reel as part
7 of the uniform?

8 A Yes.

9 MR. ABRAHMS: I don't have any other questions.

10 JUDGE WEDEKIND: Cross?

11 MS. PARKER: Yes. We would like some time, however,
12 considering the length of the direct testimony.

13 JUDGE WEDEKIND: Do you want to take lunch?

14 MS. PARKER: Should we take lunch?

15 MR. BERUL: Good time for a lunch break.

16 JUDGE WEDEKIND: All right. How are we doing on time?

17 MR. ABRAHMS: Probably not as good as I'd like us to be
18 doing. The other two witnesses we have I think will be very,
19 very short. They're only going to speak to the disparate
20 treatment allegations, the supervisors in question. And then
21 we have Ms. Rocha, which I can talk to Counsel for General
22 Counsel and for the Charging Party, we may even be able to
23 stipulate to that testimony and shorten it, so we can get out
24 of here.

25 JUDGE WEDEKIND: Okay. All right. Well, in light of

1 preparation, et cetera, let's just take an hour for lunch,
2 okay? So -- is it 12:00? What time is it? Come back at 1:05.
3 Off the record.

4 (Off the record at 12:04 p.m.)

5 JUDGE WEDEKIND: Cross?

6 MS. PARKER: Yes, Your Honor.

7 **CROSS-EXAMINATION**

8 Q BY MS. PARKER: Good afternoon. I cross. I don't have
9 too many questions. I won't keep you up here too long.

10 MR. ABRAHMS: Can I refer the witness to Respondent's
11 Exhibit 5 for a moment?

12 Q BY MR. ABRAHMS: Okay. Now, in looking at Respondent's
13 Exhibit 5, there appears to be two holes on either side of
14 whether the clip is affixed. Do you know what those holes are
15 for?

16 A No.

17 Q All right. When employees clip the hospital approved pins
18 that you mentioned onto the identification badge, do they clip
19 it onto that plastic exterior of the identification badge?

20 A I have seen it clipped to the exterior plastic, yes,
21 badge.

22 Q And could you just reiterate the type of pins specifically
23 that the hospital allows to be placed on those identification
24 badges?

25 A Uh-huh. We allow basically hospital distributed or

1 preapproved pins demonstrating professional achievement or
2 service awards for years of tenure for service.

3 Q And I believe you also mentioned that you allow the I
4 Give --

5 A I Give award.

6 Q -- pins to be --

7 A Uh-huh.

8 Q -- pinned onto the identification badge. Just give me a
9 second.

10 MS. PARKER: Can I have the witness look at General
11 Counsel's Exhibit 20?

12 Q BY MS. PARKER: Do you have General Counsel's 20 before
13 you --

14 A Uh-huh.

15 Q -- there?

16 A I do.

17 Q Is that the I Give pin that you're referring to that's
18 permitted to be worn on the identification badge?

19 A This appears to be an I Give pin. They're currently white
20 with green writing. I haven't seen actually an I Give pin like
21 this. But yes, that is an I Give pin.

22 Q Is it fair to say that they issue different colors --

23 A Yes. They must --

24 Q -- different year --

25 A -- use different colors, different years.

1 Q For different years.

2 A Yeah.

3 Q Is there a limit to the number of pins that -- hospital
4 approved pins that employees can wear on their identification
5 badges?

6 A There is not a policy regarding the number of pins.
7 However, the information on the badge must be readily visible
8 and readable.

9 Q Thank you. Now, I assume there's a uniform requirement
10 for certified nursing assistants. Is that correct?

11 A Yes, our unlicensed assistive personnel have uniform
12 requirements.

13 Q And what are those uniform requirements?

14 A Well, they are listed in the policy under the teal group.
15 There's in teal. And same uniform requirements in direct
16 patient caregivers applies to the unlicensed assistant
17 personnel.

18 Q Okay. So does that mean the CNA job title would be
19 emblazoned across the scrub top?

20 A Be across the scrub top.

21 Q And would their job title also be on their identification
22 badge?

23 A Yes.

24 Q All right.

25 MS. PARKER: Let me have the witness look at -- let's see.

1 That's -- General Counsel's 4 and General Counsel's 6.

2 Q BY MS. PARKER: Okay. Now, on General Counsel's 6 at the
3 very top underneath where it says reference PC26.02, it says
4 supersedes. And then it says new.

5 A Uh-huh.

6 Q Is that because this was a new policy?

7 A That's correct.

8 Q So it wasn't superseding another policy.

9 A Correct.

10 Q And if you open General Counsel's Exhibit 4 to the second
11 page.

12 A Uh-huh. Yes.

13 Q And then look at number 10 --

14 A Uh-huh.

15 Q -- where it says only MHS approved pins, badges and
16 professional certifications may be worn. That specific
17 language is not included in Policy 261.02, correct?

18 A That specific language is not.

19 MS. PARKER: Give me a minute. I'm just reviewing my
20 notes. I'll be just a second. Let me have the witness look at
21 Respondent's -- I believe it's 13.

22 Q BY MS. PARKER: Okay. Now looking at Respondent's Exhibit
23 13, I'm looking at the language after that first checkmark,
24 where it says the hospital is supplying one retractable badge
25 holder and one watch per employee for free. And then in

1 parentheses, one time only.

2 A Yes.

3 Q So employees were only given the free items for the first
4 time --

5 A That refers only to the watch.

6 Q To the watch. Okay. So do employees have to pay for a
7 badge holder, if theirs breaks --

8 A No.

9 Q -- or is lost?

10 A No. Only the watch.

11 MS. PARKER: All right. That -- those are the only
12 questions I have for this witness.

13 JUDGE WEDEKIND: Charging Party?

14 MR. BERUL: Yes.

15 **CROSS-EXAMINATION**

16 Q BY MR. BERUL: First of all, good afternoon. My name is
17 Michael Berul. I'm an attorney with CNA. Ms. Fix, I'd like
18 you to look at GC's Exhibit 8, if it's still there.

19 A Yes.

20 Q And you've testified you recognize that image, right?

21 A Yes.

22 Q Okay. It doesn't say Long Beach Memorial Hospital, does
23 it?

24 A No.

25 Q Okay. And I'd like you to look at GC's Exhibit 12, if the

1 Court Reporter still has it. Have you seen this? I think you
2 were asked questions about this earlier.

3 A Yes.

4 Q Okay. Now, looking at the badge, does the badge reel
5 holder that you can see in this picture cover up the
6 identification of the person as an RN?

7 A Could you repeat it?

8 Q Yes. Sorry for the confusing question. It's true, isn't
9 it, that the holder for the badge reel -- the -- for the badge,
10 the badge reel, holding the badge does not cover the
11 identification of Cheri as an RN. Isn't that true?

12 A That's correct.

13 Q Okay. Okay. I'd just like you to look at General
14 Counsel's Exhibit 4. Do you still have that in front of you?

15 A Okay.

16 Q And if you refer to paragraph ten on page two.

17 A Yes.

18 Q Now, looking at the word badges, it doesn't say
19 identification badges, does it?

20 A It doesn't say identification badges.

21 Q And you're aware that members of unions do wear badges
22 that reference a union, aren't you?

23 MR. ABRAHMS: Objection, vague. Time. Place.

24 MR. BERUL: It's cross-examination.

25 JUDGE WEDEKIND: Well, just for clarification. Can you

1 just give us the time period?

2 MR. BERUL: Okay. In the course -- well, of the entire
3 course of her career of dealing with unions.

4 Q BY MR. BERUL: It's true, isn't it, that you unions have
5 badges that reference the union? Isn't that true?

6 A Employees of the union?

7 Q Members of the union.

8 A Members of the union. I can't recall seeing a badge on a
9 union member that --

10 Q Fair enough. Fair enough. And do you recall ever seeing
11 an employee union member wearing a union pin?

12 A No. I tend to recall t-shirts.

13 Q Okay. But wouldn't you agree it's certainly something
14 that an employee could wear a pin that referenced the union?

15 A An employee could wear a pin, if they were not in uniform.

16 Q No, I'm just saying just in general, an employee could
17 wear a pin that says the name of their union on it.

18 A Not if it --

19 Q I'm not referring --

20 A -- I'm sorry.

21 Q -- to the policy.

22 A I don't --

23 Q -- I'm --

24 A -- understand.

25 Q -- I'm --

1 A Are you talking about at --

2 Q -- I'm --

3 A -- the bad when --

4 Q -- No, I'm talking --

5 A they're at work?

6 Q -- I'm just talking --

7 A Are you talking about --

8 Q -- about in general. I'm just talking about in general

9 that an employee could wear a pin that names the union. Isn't

10 that true?

11 A If they were not --

12 Q I'm not asking about the policy. I'm just saying.

13 JUDGE WEDEKIND: I'm confused, too.

14 THE WITNESS: Yeah.

15 JUDGE WEDEKIND: So I think you need to be more specific

16 about what you're asking.

17 MR. BERUL: Okay.

18 JUDGE WEDEKIND: Employee at work? Employee anywhere?

19 Employee where?

20 Q BY MR. BERUL: An employee at work. I'm just talking

21 about an employee anywhere.

22 MR. BERUL: Just in reference to the word pin, Your Honor,

23 that there are such things as union pins. And I'm trying to

24 ask the witness. Maybe she doesn't have knowledge about union

25 pins.

1 Q BY MR. BERUL: But it's true, isn't it, that there are
2 pins that reference unions?

3 A I believe you. I don't know.

4 Q You don't know. Fair enough.

5 A Uh-huh.

6 Q Okay. Now this -- paragraph ten talks about MHS approved
7 pins and badges. What is the approval process to get a pin
8 badge approved?

9 A I believe that in this case, it references an MHS
10 distributed pin or badge.

11 Q Doesn't say that, though, does it?

12 A No, it doesn't.

13 JUDGE WEDEKIND: What are you looking at when you say in
14 this case?

15 MR. BERUL: Oh, I was -- I thought --

16 JUDGE WEDEKIND: Just the exhibit --

17 THE WITNESS: Yeah, 10.

18 MR. BERUL: -- I -- we were still looking at the same
19 exhibit. Exhibit GC --

20 THE WITNESS: Where it says approved.

21 MR. BERUL: -- paragraph 10.

22 JUDGE WEDEKIND: GC-4?

23 THE WITNESS: Yeah. I'm on page two of three.

24 MR. BERUL: I asked the witness about the approval process
25 and she said -- referred to the issued as opposed to approved.

1 And I clarified it doesn't say that. So --

2 MR. ABRAHMS: Objection. Document --

3 MR. BERUL: -- I mean --

4 MR. ABRAHMS: -- document speaks for itself.

5 MR. BERUL: -- the testimony's in there. All right, I'm
6 done.

7 JUDGE WEDEKIND: Any redirect?

8 **REDIRECT EXAMINATION**

9 Q BY MR. ABRAHMS: Counsel for General Counsel asked you
10 whether -- if a uniform badge reel broke, whether it was
11 replaced for free. How would an employee get a replacement
12 badge? Is that -- what's the process for that? Or strike
13 that. Not a badge. A badge holder. Reel holder.

14 A Yeah. A badge reel holder, they are held at the unit
15 level, at the patient care unit level usually by management in
16 that unit as well as in human resources department.

17 Q So would a -- is there a form or how do they --

18 A No.

19 Q -- get that?

20 A You just walk in and you're handed a reel.

21 Q So you just ask HR or --

22 A Yeah.

23 Q -- you.

24 A You just ask or you ask your manager to give you one.

25 Q Any limit on the number of them that somebody could get in

1 a year?

2 A No, there's no limit.

3 Q The uniform badge reel, I think you said that all of the
4 versions contain that same logo that was in General Counsel's
5 Exhibit 8. Is that right?

6 A Correct.

7 Q Okay. It -- is there -- is that branding throughout the
8 hospital? Is it visible anywhere else?

9 A Yes. This would be the Memorial Care brand.

10 Q Okay.

11 A So it would be on multiple documents, pieces of paper,
12 signage.

13 Q Is it on the big main signs? Out --

14 A I believe it -- yes, it is, on the big main signs.

15 Q So somebody coming to the hospital would see that logo.

16 A That's correct.

17 MR. BERUL: Objection to the leading question on redirect.

18 MR. ABRAHMS: I can withdraw it.

19 JUDGE WEDEKIND: Well, the -- just -- in general, leading
20 questions are less persuasive. I caution you, but I'm
21 overruling the objection. I'm not going to strike the
22 testimony.

23 MR. ABRAHMS: I'm not sure it was all that probative
24 anyway. Okay. I have nothing else. Thank you.

25 MS. PARKER: No further cross from --

1 JUDGE WEDEKIND: Don't leave.

2 MS. PARKER: -- General Counsel.

3 JUDGE WEDEKIND: Don't leave. Don't leave.

4 THE WITNESS: Oh, don't leave.

5 JUDGE WEDEKIND: I just have one or two questions.

6 THE WITNESS: Oh, okay. Sorry.

7 JUDGE WEDEKIND: We may have had testimony on this
8 already. If so, I apologize. But what is the reason that the
9 RNs are not allowed to wear the jackets into the patient room?

10 THE WITNESS: Right. Because the jackets are long
11 sleeved. And when you provide care, it's bare below the
12 elbows.

13 JUDGE WEDEKIND: Okay. That's what I thought. And what
14 is the source of the policy that only certain pins are allowed,
15 the service pins, et cetera? What is the source of that?

16 THE WITNESS: The source of them being approved pins?

17 JUDGE WEDEKIND: Uh-huh.

18 THE WITNESS: Or distributed pins. The source was just so
19 that the badge would -- the patient would not be confused by
20 other types of pins.

21 JUDGE WEDEKIND: Okay. Thanks. I appreciate the answer,
22 but actually my question -- what I meant by source was the
23 written rule or writ -- is there a written policy that -- where
24 does that come from that you can only wear these certain pins.
25 Is there a written policy that -- where does that come from

1 that you can only wear these certain pins? What's the source
2 of --

3 THE WITNESS: Well --

4 JUDGE WEDEKIND: -- the policy source of that?

5 THE WITNESS: -- it is the MHS policy of distributed pins.

6 JUDGE WEDEKIND: Which policy?

7 THE WITNESS: This is ten.

8 JUDGE WEDEKIND: Just again, refer to the GC number, if
9 you will.

10 THE WITNESS: I'm sorry, sir.

11 JUDGE WEDEKIND: GC --

12 THE WITNESS: It is 4.

13 JUDGE WEDEKIND: GC-4. Okay.

14 THE WITNESS: GC-4.

15 JUDGE WEDEKIND: Okay. No other questions.

16 THE WITNESS: Because that would be the global policy --

17 JUDGE WEDEKIND: Okay.

18 THE WITNESS: -- to which we amplified and clarified.

19 JUDGE WEDEKIND: Got it. Okay.

20 THE WITNESS: Okay.

21 JUDGE WEDEKIND: Any other questions? Okay. Thank you
22 very much. Please don't discuss your testimony with any other
23 witness or potential witness until this proceeding is over.
24 All right. Let's go off the record.

25 (Off the record at 1:36 p.m.)

1 JUDGE WEDEKIND: Back on the record. Next witness?

2 MS. PATERNO: The Employer calls Robin Johnson.

3 JUDGE WEDEKIND: Ms. Johnson --

4 MS. JOHNSON: Yes.

5 JUDGE WEDEKIND: -- good afternoon.

6 MS. JOHNSON: Hi.

7 JUDGE WEDEKIND: Could you raise your right hand for me?

8 MS. JOHNSON: Uh-huh.

9 Whereupon,

10 ROBIN JOHNSON

11 having been duly sworn, was called as a witness herein and was
12 examined and testified as follows:

13 JUDGE WEDEKIND: Thank you very much.

14 THE WITNESS: Uh-huh.

15 JUDGE WEDEKIND: Please state your name and spell your
16 last name for us.

17 THE WITNESS: My name's Robin Johnson. Last name J-O-H-N-
18 S-O-N.

19 JUDGE WEDEKIND: Great. Thank you very much.

20 THE WITNESS: Uh-huh.

21 DIRECT EXAMINATION

22 Q BY MS. PATERNO: Good afternoon.

23 A Hi.

24 Q So where are you employed, Ms. Johnson?

25 A I'm employed at Long Beach Memorial Medical Center.

- 1 Q And how long have you worked for the hospital?
- 2 A I've worked for the hospital for 35 years.
- 3 Q Are you a -- what's your current position at the hospital?
- 4 A My current position is assistant unit manager for Miller
- 5 Children's Pre-op area.
- 6 Q Okay. Are you a registered nurse?
- 7 A I am.
- 8 Q How long have you been a registered nurse?
- 9 A Thirty-six years.
- 10 Q Thirty-six years.
- 11 A Yeah.
- 12 Q So you're an AUM?
- 13 A Yes.
- 14 Q And how long have you been in that position?
- 15 A I've been in that position for six and a half years.
- 16 Q And prior to being AUM, what position did you hold?
- 17 A I was a staff nurse in the adult surgical outpatient
- 18 surgery department.
- 19 Q So a registered nurse at the hospital.
- 20 A Yes.
- 21 Q Right -- as an AUM, about how many employees do you
- 22 currently supervise?
- 23 A We have a total of 60.
- 24 Q And do you supervise registered nurses?
- 25 A Yes.

1 Q And do you supervise any other direct patient care
2 providers?

3 A We also supervise patient care assistants and patient
4 service technicians.

5 Q And do you have any responsibility -- you mentioned
6 Miller's --

7 A -- uh-huh.

8 Q -- being Miller's Children. Do you have any
9 responsibilities in the hospital anywhere else other than at
10 the Miller's Children's side?

11 A Right. I also help -- I cover the adult surgical pavilion
12 also. Help with staffing for both units.

13 Q So you said you were pre-op.

14 A Yes.

15 Q So you're -- that's short for --

16 A Before surgery.

17 Q Before surgery.

18 A Yeah.

19 Q Okay.

20 A Uh-huh.

21 Q So are you familiar with the hospital's uniform policies
22 with respect to direct patient care providers?

23 A Yes.

24 MS. PATERNO: I'd like to have the witness be shown GC
25 Exhibits 5 and 6.

1 THE WITNESS: Thank you. Okay.

2 Q BY MS. PATERNO: So you're aware that the hospital has
3 imple -- has a uniform policy that applies to registered
4 nurses?

5 A Yes.

6 Q Are you wearing --

7 A Yes.

8 Q -- a --

9 A The uniform.

10 Q -- some top -- near the top?

11 A Yes.

12 Q That says RN on it?

13 A Uh-huh.

14 Q Okay. And is this your -- you wear this even as an AUM?

15 A I wear it every day. Uh-huh.

16 Q So have you ever had any action -- any interaction with
17 any employees about badge reels?

18 A I did when we received them in the rollout and I
19 distributed badge reels.

20 Q Okay. So was that in December, 2014?

21 A No. It seems like it was about a year ago.

22 Q And what happened? Tell me about when you distributed it.

23 A Our director had given us some badge reels and asked that
24 we distribute them in accordance with the policy, dress code
25 policy. And so I took some and went looking in the room for

1 people who did not have this particular Memorial logo badge
2 reel.

3 Q Okay. So your director -- do you know why your director
4 asked you to distribute?

5 A I'm sorry. Di --

6 Q Do you know why --

7 A Oh.

8 Q -- your director asked you?

9 A Because we needed to comply with the dress code policy.

10 Q So where were you when you first started distributing?

11 A I was over in the adult pavilion doing staffing.

12 Q Okay. And --

13 A Yeah.

14 Q -- can you just generally describe the area?

15 A There are two open -- big open rooms.

16 Q Okay. And about how many is it -- how many direct patient
17 care employees were in those areas at that time?

18 A I would say about maybe 15.

19 Q And so what did you --

20 MS. PARKER: Can I object just for a second? It's not
21 clear to me the timeframe that we're dealing with it right now.
22 I don't know if you established it and I missed it. Just --

23 MS. PATERNO: Okay.

24 JUDGE WEDEKIND: Did you want to respond or -- oh, okay.
25 I thought she started out by saying it was about a year ago.

1 MS. PARKER: About a year ago?

2 THE WITNESS: Uh-huh. Yeah.

3 MS. PARKER: Okay. I missed that.

4 JUDGE WEDEKIND: And I -- unless we changed the time
5 period --

6 THE WITNESS: Yeah.

7 JUDGE WEDEKIND: -- I think we're still there.

8 THE WITNESS: Yeah.

9 JUDGE WEDEKIND: Overruled.

10 Q BY MS. PATERNO: So you were in the adult -- you were
11 describing the two areas?

12 A Yes. Big open rooms.

13 Q Okay.

14 A Lots of people.

15 Q And so what did you do? What did you do with the badge
16 reels?

17 A I went into the room and looked for staff nurses who
18 needed to have the -- this particular Memorial logo badge reel.

19 Q And what did you find out --

20 A -- I just --

21 Q -- out of the -- at the fifth -- out of the 15th --

22 A -- saw a couple of people who did not have it.

23 Q And what did you do -- please tell me about those
24 incidents, the --

25 A Okay.

1 Q -- first one.

2 A Well, so the first person I saw was Theresa Stewart. And
3 I approached her and I gave her the badge reel and told her
4 that this was the new badge reel. We needed to wear this to be
5 in compliance with the dress code policy.

6 Q And did you have -- did you say anything else?

7 A No, that was pretty much it. Very quick interaction.

8 Q And did you -- do you know what kind of badge reel she was
9 wearing?

10 A No. I just noticed it wasn't the Memorial pattern, the
11 logo.

12 Q And pattern, you mean --

13 A Visual. It wasn't the Memorial Logo.

14 Q It wasn't the logo.

15 A Yeah. Uh-huh.

16 Q Okay. And did she say anything in response?

17 A No.

18 Q And did you -- what did you do after that? Kept walking
19 around?

20 A I kept walking around. And I really gave out only one
21 more, because everyone else had them already.

22 Q And tell me about that incident.

23 A Okay. Well that was -- I believe that was Gretchen
24 Morrow, another RN there. And I told her the same thing. This
25 is the new badge reel, so that we're in compliance with the

1 dress code policy. And I gave her that.

2 Q And do you recall what kind of badge reel she was wearing?

3 A I don't.

4 Q And so you gave those two people badge reels?

5 A Correct.

6 Q Okay. And then what did you do? What about everybody
7 else?

8 A Well, I looked at -- I walked around the room and I didn't
9 see anyone else who didn't have one, a Memorial badge reel. So
10 then I -- that was that for that area.

11 Q Okay. And then you -- did you go back to the Miller side
12 of the hospital --

13 A I did --

14 Q -- that day?

15 A -- go back to Millers side. And I took some badge reels
16 with me. And I looked at those employees, too, but everybody
17 already had one.

18 Q Okay. And what -- can you describe that area?

19 A That's also a big open area.

20 Q And about --

21 A Big room.

22 Q -- how many employees were in that area?

23 A Probably about eight. Eight to ten. Something like that.
24 Yeah.

25 Q Did you ask -- when you -- so Ms. Steward and Ms. Morrow.

1 Did you ask either of them to take off whatever badge reel they
2 were wearing?

3 A No.

4 Q And did they take it off? Did you stay to see if they
5 changed their badge reel?

6 A No, I did not.

7 Q Let's see. Did you ever counsel or discipline Ms. Stewart
8 or Ms. Morrow --

9 A No.

10 Q -- about the badge reel? Did you care whether Ms. Morrow
11 or Ms. Stewart were wearing the union badge reel or a Mickey
12 Mouse badge reel or Hello Kitty badge reel?

13 A Well, I want them to be in compliance with the policy.

14 Q So --

15 MS. PARKER: Objection. I don't think she testified about
16 Mickey Mouse or Hello Kitty.

17 JUDGE WEDEKIND: Overruled. I think -- the question was,
18 "Did you care what kind of badge they had," other than --

19 BY MS. PATERNO: What --

20 JUDGE WEDEKIND: -- the fact that it --

21 THE WITNESS: Can you --

22 JUDGE WEDEKIND: -- approved badge.

23 THE WITNESS: What do you mean, do I care?

24 Q BY MS. PATERNO: When you were walking around, you were
25 handing them out be --

1 A Yeah.

2 Q What was your agenda for handing them out?

3 A So that everyone would be in compliance with it. So I
4 guess I do care that they are in compliance with the --

5 Q Right.

6 A -- with the policy. Yeah.

7 Q And -- but you said you were -- you didn't -- it didn't
8 matter which one -- which type of --

9 A Oh no. It doesn't matter what anybody else is wearing. I
10 -- just that if it was a Memorial one or not, yeah.

11 Q And did you ever follow up with Ms. Stewart or Ms. Morrow?

12 A No.

13 Q And why not?

14 A Well, we're busy taking care of patients and my priority
15 is really patient care. And I think they're adult
16 professionals and I'm -- didn't feel the need to stand over
17 them and make sure they did that. So --

18 Q And so -- you know, since that time, have you ever spoke
19 to any other employees about badge reels?

20 A No.

21 Q Has anyone's badge reel ever broken?

22 A Yes. Yes.

23 Q Okay.

24 A And I --

25 Q What happens if someone's badge reel breaks?

1 A We have extras to give them.

2 Q Okay. Has anyone ever come to you with a broken one?

3 A Yes.

4 Q And when was that?

5 A Just yesterday someone did. Yeah.

6 Q do employees know they can come and get -- if they have a
7 broken one, they can get a replacement?

8 A They can.

9 MS. PATERNO: No further questions.

10 JUDGE WEDEKIND: Cross?

11 MS. PARKER: Could we have just a couple minutes?

12 JUDGE WEDEKIND: Sure. Off the record.

13 (Off the record at 1:49 p.m.)

14

CROSS-EXAMINATION

15 Q BY MS. KAGEL: You said that you care that the RNs you
16 supervise are in compliance with the hospital policy on the
17 uniform?

18 A I do care that they're in compliance.

19 Q All right. And so you would say that this is an important
20 policy to the hospital?

21 A I would say it is, yeah.

22 Q However, you didn't choose to back and check to see if
23 these two employees complied with the policy?

24 A Correct.

25 Q Okay. Thank you.

1 MS. KAGEL: That's it.

2 JUDGE WEDEKIND: Anything else?

3 MR. BERUL: Nothing.

4 JUDGE WEDEKIND: Charging Party?

5 MR. BERUL: No.

6 JUDGE WEDEKIND: Oh, okay. Thank you very much, Ms.
7 Johnson.

8 THE WITNESS: Thank you.

9 JUDGE WEDEKIND: We have something called a sequestration
10 order. Please don't discuss your testimony with any other
11 witness --

12 THE WITNESS: Okay.

13 JUDGE WEDEKIND: -- or potential witness until this is
14 over. Hopefully by the end of the day.

15 THE WITNESS: Okay.

16 JUDGE WEDEKIND: Thank you. You can leave that there.
17 Okay. Off the record.

18 (Off the record at 1:58 p.m.)

19 JUDGE WEDEKIND: All right, back on the record. Next
20 witness?

21 MS. PATERNO: The hospital would like to call Colleen
22 Coonan.

23 JUDGE WEDEKIND: Ms. Coonan, could you raise your right
24 hand for me?

25 Whereupon,

1

COLLEEN COONAN

2 having been duly sworn, was called as a witness herein and was
3 examined and testified as follows:

4 JUDGE WEDEKIND: Thank you, very much. Please speak up a
5 little bit, we're recording.

6 THE WITNESS: Okay.

7 JUDGE WEDEKIND: And, state your name and spell it for us.

8 THE WITNESS: Colleen Coonan, C-O-L-L-E-E-N, C-O-O-N-A-N.

9 JUDGE WEDEKIND: Great, thank you very much.

10

DIRECT EXAMINATION

11 Q BY MS. PATERNO: Good afternoon, Ms. Coonan.

12 A Hi.

13 Q Where are you employed; currently employed?

14 A Miller Children's and Women's Hospital in Long Beach.

15 Q And, how long have you worked for the hospital?

16 A Ten years.

17 Q And, what is your position?

18 A I'm the clinical operations director of two general
19 pediatric units.

20 Q And, you said two units; pediatric?

21 A Yes, they're pediatric.

22 Q And, Miller's -- is Miller's a --

23 A Miller's is the children's hospital that's associated with
24 Long Beach Memorial; we're on the same campus. There's -- it's
25 all Long Beach Memorial.

1 Q Okay. And, are you a registered nurse?

2 A I am.

3 Q And, how long have you been a registered nurse?

4 A Forty years.

5 Q When did you go into management?

6 A 1994.

7 Q And, what are your responsibilities as director of
8 clinical operations in pediatrics?

9 A I oversee the daily operations; the staffing, the finance,
10 the budget, quality of care, make sure regulations are
11 followed.

12 Q Do your responsibilities include overseeing registered
13 nurse?

14 A Yes, they do.

15 Q Do they -- do you oversee other direct patient care
16 providers --

17 A Yes.

18 Q -- in addition? Do you supervise supervisors?

19 A I do.

20 Q About how many?

21 A Eleven.

22 Q And, what are their titles?

23 A I have AUM's, which are Assistant Unit Managers, and I
24 have a manager.

25 Q So --

1 A Those are the supervisors.

2 Q So, ten AUM's?

3 A Yes.

4 Q And, just generally; what is the difference between your
5 job and an AUM's job?

6 A AUM's are on the unit daily, they -- they're kind of like
7 the old term, charge nurse. And, so they coordinate the
8 patient flow, they figure out the immediate staffing. And,
9 mine is more global, strategic, it's day-to-day, it's making
10 sure that we stay on track.

11 Q Okay. And, what type of employees do you interact with
12 most on any given day?

13 A Every day I interact with whoever's in charge, which is
14 usually the AUM, if the AUM's off, it's a relief coordinator,
15 and there's a break nurse; I interact with them. And, then I
16 try and -- I talk to all the staff that I see on the unit.

17 Q And, about how many employees do you oversee?

18 A 200.

19 Q And, about how many of your 200 employees are registered
20 nurses?

21 A About 160.

22 MS. PATERNO: I would like to please ask -- show the
23 witness GC Exhibit 6 -- or and 5; 5 and 6.

24 THE WITNESS: Thank you.

25 Q BY MS. PATERNO: Are you familiar with these --

1 A Yes.

2 Q -- policies --

3 A Yes.

4 Q -- with the hospital, a patient care provider uniform
5 policies?

6 A Yes.

7 Q Are you familiar with the badge reel portion of the
8 policies?

9 A Yes.

10 Q And, do you know when these policies were first
11 implemented as to registered nurse?

12 A The fall of 2014.

13 MS. PATERNO: I would like to ask -- would like to have
14 the witness be handed Employer's Exhibit 10.

15 THE WITNESS: Thank you.

16 Q BY MS. PATERNO: Do you recognize this document?

17 A Yes.

18 Q Did you receive this flyer?

19 A Did I receive it? Yes.

20 Q Yes. What's the date on it?

21 A The date for pick up is December 1st --

22 Q Did you --

23 A -- 2014.

24 Q At the top, attention all managers; are you a manager?

25 A Yes.

1 Q Isn't AUM a manager?

2 A Yes.

3 Q Did you pick-up these reels?

4 A Yes.

5 Q And, did you distribute them following your pick-up of
6 these reels in December 2014?

7 A We did, yes.

8 Q And, after that distribution; what happened next, with the
9 badge reels?

10 A Well, the -- so, badge reel distribution was in phases, so
11 these came out and then -- I'm sorry, I'm not -- no. Do you
12 mean how do they --

13 Q That's okay, that's fine.

14 A -- give them out?

15 Q The badge reel distribution; please describe badge reel
16 distribution, because you're involved with that badge reel
17 distribution?

18 A Okay. So, only one AUM works a day, they take different
19 days. So, whoever wasn't working that day, along with myself
20 and the manager, always had some with us and we would make sure
21 that each employee had their own, had one. So, we told -- it
22 was rolled out with the policy, so they were expecting them.
23 And, if they --

24 Q Who is expecting them?

25 A All of the staff.

1 Q Okay. The registered nurses?

2 A Yes.

3 Q And, they were in uniforms at that time?

4 A Yes.

5 Q All right. And, so you got -- you -- continue, please.

6 A So, we distributed them, these were posted on the units,
7 so the people knew they were coming. And, we would just -- we
8 said, you know, in morning huddles -- we group in the mornings;
9 we do huddles as a group and we did announce the reels are
10 here; we're going to be passing them out. If you don't have
11 them, come to us, we'll see you. But, just recall that this is
12 part of the standard uniform now and everybody needs to make
13 sure you have the right reel on.

14 Q And, at that time, was there -- were there a lot of people
15 receiving these badge reels?

16 A Yes. At the first dish-out -- the first dish -- because,
17 some came with the uniforms and then if they started to break,
18 people would like a heavier one. So, the -- as the better ones
19 came, some people would like them replaced.

20 Q So, they're different incarnations, if you will, of the
21 badge reels?

22 A There was.

23 Q And, when was the next -- when did the new badge reel
24 version come out after the December badge reels?

25 A March or April, sometime in early spring.

- 1 Q Okay. And, then was that it? Or, was there another?
- 2 A I think there was a third one.
- 3 Q And, would you know when that happened?
- 4 A Probably May, June-ish.
- 5 Q And, do you know what was wrong with the badge reels?
- 6 A Well, so the first ones were a little bit light and when
- 7 people would pull them, because you use them a lot to go in and
- 8 out of doors; you use them to go in the parking lot, you use
- 9 them everywhere. So, when people would pull them, the elastic
- 10 started to expand, and they wouldn't regroup, so they weren't
- 11 strong enough. So, then people wanted heavier ones. And, then
- 12 the heavy ones came and some people complained that those were
- 13 too heavy, and they preferred the smaller one that we went
- 14 back -- kept going back to the vendor, and they were able to
- 15 make a smaller, strong one, with like a fishing wire type.
- 16 Q Okay. And, all those had the Memorial care logos --
- 17 A They all had to have --
- 18 Q -- look like --
- 19 A -- the logo on it, yes.
- 20 Q -- the one in the Employer Exhibit 10, in front of you?
- 21 A Yes.
- 22 Q And, also the one, I see you're wearing?
- 23 A This one, yes.
- 24 Q And, is that -- is there a piece of -- what's it attached
- 25 to?

1 A So, this is --

2 Q Is there a --

3 A Oh, the tab --

4 Q -- is there a thin --

5 A -- on my uniforms --

6 Q -- piece of cloth?

7 A So, the uniforms were all made with a little tab to wear

8 on the right shoulder, so there'd be a place for the badge to

9 go.

10 Q Okay.

11 A So, that it's on your right shoulder and high and visible.

12 Q And, your top has a pattern on it I see; would you

13 describe it and tell me what it is and why -- explain it,

14 please?

15 A So, when the uniforms were rolled it was to distinguish

16 the different disciplines, so that when a patient sees who's in

17 the room, they know what the discipline is. So, the nurses

18 were assigned to all be in navy, and from Children's, we'd

19 always worn, you know princess uniforms and cat uniforms. And,

20 everything just to help the children feel more comfortable.

21 So, there was a push to make sure there'd be a little bit of

22 change for the children. So, it wouldn't be just the plain

23 navy, so we had the option to go -- this is our logo for the

24 Children's Hospital, actually is the mommy and the baby

25 dolphin, and these are waves. So, they just put the Miller's

1 logo on the shirt and made it an option for Children's. So,
2 Children's could wear either the logo T-shirt, the logo shirt,
3 or the plain navy one. But, they both have the RN on them and
4 the Memorial.

5 Q Okay. And, a smiling mother and baby dolphin?

6 A Smiling.

7 Q Happy, happy mother and baby.

8 A The adult side only wears the plain navy.

9 Q Okay. And, so during those distribution cycles of the
10 different badge reels; did all of your employees get a badge
11 reel at some point?

12 A Yes.

13 Q As best to your knowledge? And, how -- and, you said you
14 gave them to your AUMs too to distribute?

15 A Yes.

16 Q And, let's see -- okay, so have you ever -- since the
17 last, sort of, phase of the roll-outs; have you had any issues
18 or incidents with badge reels? Like since -- so, let's just
19 say that the last wave of badge reels came out in May or
20 whatever you said, June, the last -- the newest, strongest,
21 fishing wire one; after that point, did you have -- were there
22 any issues with employees regarding badge reels?

23 A I don't know if you call them issue, but if I saw anyone
24 without it on, I would remind them and we all had them with us;
25 the managers would always have one or two in their pockets that

1 they could share.

2 Q Okay. So, when was the first time that you remember; what
3 happened on the first time that you found someone who was not
4 wearing Memorial care badge reel?

5 A What did I do?

6 Q Yeah. What was -- what -- do you remember what was on the
7 badge reel?

8 A Well, I've seen a couple; one was Hello Kitty, one was a
9 little frog, like we -- we're used to having the children's
10 things around. So, they had little cartoon characters, and I
11 just go up to them and say, please remember it's the standard
12 uniform now, you need to wear the Memorial reel; do you have
13 one?

14 Q Do you remember --

15 A And, they'd say yes or no and then we'd give them one.

16 Q And, did you -- do you remember an incident with the Hello
17 Kitty person; do you remember that person's name?

18 A That was Joy I think.

19 Q And, why do you remember her name, or why do you remember
20 Hello Kitty?

21 A It's because she used to wear all the Hello Kitty top all
22 the time, so she just loves Hello Kitty, she always had it on.
23 So, that was like her last sole token, I guess, of changing to
24 the uniform and she still had the little thing up here that she
25 had, either forgotten or chose not to, or whichever. But, she

1 just changed it as soon as I brought it to her attention.

2 Q What did you say to that employee when you saw that she
3 was wearing a Hello Kitty?

4 A I said, oh, do you have a reel? You know, we're not
5 allowed to wear those anymore. The standard uniform is to wear
6 the Memorial reel.

7 Q And, what did she say?

8 A She said, okay, yes, I do have one, I'll get it.

9 Q Okay. And, when was this?

10 A When was that?

11 Q Yeah.

12 A Probably the middle of last year. Summer. Let's say
13 May --

14 Q That's fine.

15 A -- or June.

16 Q And, what was her position?

17 A She's an RN too on the pedes floor.

18 Q So, registered nurse?

19 A A registered nurse, yes.

20 Q And, did you counsel or discipline that employee?

21 A No.

22 Q Did you notify HR that she was wearing a Hello Kitty badge
23 reel?

24 A No.

25 Q Have you counseled or disciplined any employee about badge

1 reels?

2 A No.

3 Q Okay. You said something about a frog?

4 A Yes.

5 Q Can you please describe that incident? What did you say
6 to that employee?

7 A Just the same thing. You know, it's just -- it was
8 just --

9 MR. BERUL: Objection to --

10 THE WITNESS: -- to remind her.

11 MR. BERUL: -- sorry to interrupt the witness. Objection
12 for just some foundation; I lost track of the time frame. If
13 that's possible. What time frame are we in?

14 JUDGE WEDEKIND: I'm not sure we ever established that.
15 You said -- the first question was; what was the first time,
16 right?

17 MS. PATERNO: Right.

18 JUDGE WEDEKIND: Okay. And --

19 MS. PATERNO: Right, first time --

20 JUDGE WEDEKIND: -- we never really found out when the
21 first time was.

22 Q BY MS. PATERNO: Okay. What's the second incident where
23 you saw a badge reel that was not --

24 MR. ABRAHMS: What's the first time?

25 MS. PATERNO: Oh, the first time.

1 Q BY MS. PATERNO: What was the first time that you saw a
2 badge reel?

3 A Well, you saw them throughout the distributions, because
4 not -- you know, it was rollout phase, so you had to -- not
5 everybody had them the same day. And, it was rollout -- as we
6 see people, we'd roll them out. So, to know exactly when I had
7 a conversation, I think --

8 Q So, after like the third distribution cycle, where they
9 were being rolled out?

10 A So, probably in June.

11 Q And, which badge reel type; do you remember which employee
12 was wearing -- which type of badge reel first?

13 A I don't.

14 Q Okay. Do you remember -- tell me about -- when was the
15 timeframe of these badge reel -- seeing these people?

16 A Well, so if the -- the third one, I believe the third
17 rollout was complete by May; is that correct, do you know? I
18 think that's -- I want to say it was by May-ish. So, it was
19 just sporadically, because sometimes people would break their
20 badge, and then they'd grab an old one and they'd be waiting
21 for a new one. So, some of them were from that. We just
22 always had our eye out and there'd be one, you know,
23 periodically through.

24 Q And, you had -- you said you remember --

25 A I've probably told at least four -- about four people --

1 Q Okay. So --

2 A -- personally, because in the morning we're standing in a
3 group doing our huddles and then I tend to see people. I only
4 see them if they're close to me.

5 Q Okay. So, you said you saw a frog?

6 A I did see a frog.

7 Q Okay. Do you remember what you said to that person?

8 A I said, that's not the new standard reel; do you have one?
9 You know, I'm sorry, you can't wear that anymore.

10 Q And, what did that person --

11 A She said, okay, yes, I'll get one.

12 Q Did --

13 A I need a new one, I'll get one.

14 Q Okay. And, when was this?

15 A When was that one?

16 Q Yeah.

17 A That might've been June or July.

18 Q Okay. Do you remember -- and, where was it?

19 A Where was it? These are usually all in the hall, that's
20 where I see the staff. Because, in the morning we stand in the
21 hall and do our rounds about the patient.

22 Q On the patient care unit?

23 A Yes.

24 Q All right. So, did you ever see anyone else without a
25 badge reel that wasn't on Memorial care?

1 A There was a CNA one also.

2 Q Can you tell -- do you supervise Ms. Brandy Welch?

3 A I do.

4 Q And, so -- you know, there's a validation; what happened
5 during the incident with Brandy and her badge reel?

6 A Pretty much the same thing. Brandy and I were just
7 face-to-face having conversation and when it finished, I said,
8 and Brandy you remember that you can't wear that reel, right?
9 You need to have the standard Memorial one. And, she said, oh,
10 Judy Fix was telling me I could wear this. And, I said, oh,
11 well do you have the other one? I had already asked her if she
12 had the other one, and she said she did. And, I said, okay, we
13 can check into that. And, I left and the next time I saw her
14 she had the Memorial one on.

15 Q Okay. And, is Judy Fix your boss?

16 A No, she's my boss's boss.

17 Q Boss's boss, okay. And, when you were talking to Brandy
18 that day; do you remember -- recall anything about that
19 conversation prior to?

20 A You know she had been off the unit in the morning and she
21 came back to the unit. And, it's very normal for us to just
22 catch people up at that time. You know, like the shift starts
23 at 7:00 to 7:30, they give reports. So, if someone is off the
24 unit and coming back at 9:00, you tend to update what's
25 happened, she's probably going to be kind of helping to fill in

1 one of the assignments. And, we were just having conversation
2 about that.

3 Q Okay. And, did you ever -- did you tell her to change out
4 her badge reel right then and there?

5 A No.

6 Q And, did you ever follow-up with Judy Fix?

7 A No.

8 Q And, why not?

9 A Well, she was never out of compliance.

10 Q And, did you -- what -- any other badge reel incidents
11 besides those three?

12 A I think there might have been one other princess one that
13 I recall.

14 Q Okay. And, when would that have been?

15 A It was probably, maybe September October-ish.

16 Q Okay. And, what did you do then?

17 A I said, did you not get your reel when we passed them out,
18 and she said, yes, it broke. And, I said, okay, you need to
19 get it replaced, please. And, she did.

20 Q Okay. And, do you remember where that was?

21 A It was on the same unit.

22 Q And, do you remember what that person's job position was?

23 A She's an RN.

24 Q Okay. And --

25 (Counsel confer)

1 Q BY MS. PATERNO: Was there any difference in your mind
2 between the frog, the Hello Kitty, princess or the -- Brandy's
3 badge reel?

4 A No. The only thing is everyone needed to have the
5 Memorial reel, because that was the standard uniform. So, it
6 didn't matter what the reel was, if it wasn't a Memorial one,
7 they were out of uniform.

8 Q All right.

9 MS. PATERNO: No further questions.

10 JUDGE WEDEKIND: Cross?

11 MS. PARKER: Just a few minutes off the record, we'll be
12 quick.

13 JUDGE WEDEKIND: Off the record.

14 (Off the record at 2:19 p.m.)

15 JUDGE WEDEKIND: Okay, back on the record.

16 MS. PARKER: Okay. General counsel actually does not have
17 any cross-examination questions for you.

18 JUDGE WEDEKIND: Charging Party?

19 MS. PARKER: Thank you for your time.

20 MR. BERUL: None for Charging Party.

21 MR. ABRAHMS: Okay, we do have one more witness, but I'll
22 ask a recess, because I'm going to see if I can talk to counsel
23 for -- General counsel and -- oh, did you have any questions,
24 I'm sorry?

25 JUDGE WEDEKIND: No. Thank you very much, Ms. Coonan.

1 THE WITNESS: Okay. Thank you --

2 JUDGE WEDEKIND: You can go.

3 THE WITNESS: -- very much.

4 JUDGE WEDEKIND: Thank you.

5 MR. ABRAHMS: I'm going to ask for a recess, so I can talk

6 to --

7 JUDGE WEDEKIND: Okay.

8 MR. ABRAHMS: -- counsel for General counsel --

9 JUDGE WEDEKIND: Sure.

10 MR. ABRAHMS: -- and the Charging Party.

11 JUDGE WEDEKIND: Sure, okay, let's go off the record.

12 (Off the record at 2:29 p.m.)

13 JUDGE WEDEKIND: And, do you have a stipulation you'd like

14 to offer at this time?

15 MR. ABRAHMS: There's going to be a couple of stipulations

16 that I think we worked out. The parties -- two of them involve

17 the admission of two new Employer exhibits, which are marked 14

18 and 15.

19 JUDGE WEDEKIND: And, these have been stipulated to by the

20 Union and you and the company?

21 MR. BERUL: As to the authenticity.

22 JUDGE WEDEKIND: As to authenticity?

23 MR. BERUL: Yeah.

24 JUDGE WEDEKIND: Okay.

25 (Counsel confer)

1 MR. ABRAHMS: And, to the first Exhibit 14 is a Charging
2 Party, Union generated flyer that was distributed to the
3 bargaining unit. The second is a letter from the hospital,
4 this being Employer Exhibit 15 to the Union dated December 3rd.
5 And, it's my understanding the party -- Union is stipulating to
6 their admission and their authenticity.

7 MR. BERUL: That is so.

8 MR. ABRAHMS: I guess the General Counsel does not have
9 any objection to their admission?

10 MS. PARKER: Not as to authenticity, we would stipulate as
11 to the relevance of these documents. These are going towards
12 Respondent's prior arguments about -- that arose in connection
13 with the amendment to the complaint yesterday, and so we would
14 just argue that they're not relevant to the issues that are
15 currently in the complaint that involved 8A1 matters.

16 MR. BERUL: Well, and I'll just note -- and, Adam, you
17 know, I think you understood this, if you disagree please state
18 so; I also, Charging Party does not believe these are relevant
19 with the lack of 8(a)5, but for purposes Mr. Abrahms wants to
20 use them for -- to avoid calling in another witness who's
21 unavailable, should you entertain the testimony that's
22 regard -- we decided to work this out with an additional
23 proposed stipulation. Adam, do you want to --

24 MR. ABRAHMS: Sure. And -- so, and that of the factual
25 stipulation would be that prior to the November 14th, 2014

1 meeting referenced in Employer Exhibit 15, the Union received a
2 proposed draft policy containing the language that is at issue
3 in paragraph 6B of the now amended complaint, and which is
4 contained in General Counsel's Exhibit 6. And, that by
5 letter -- by the letter dated December 3rd, which is now
6 exhibit -- Employer Exhibit 15. The Union was notified that
7 the hospital was implementing that language.

8 MR. BERUL: And, just note, Your Honor, just for
9 clarification, yesterday when I stated we've never seen that --
10 I had never seen that and my client had not, because we'd not
11 seen the finalized version, but the language at issue in
12 paragraph 6B had been proposed and then we were informed was
13 implemented; we tried to pursue 8(a)5 routes. But, we had
14 never seen the final policy until yesterday, so I still think
15 it's irrelevant that there -- for the sake of your --
16 Respondent's intended use or whatever, you know, we don't
17 object to its admissibility as to this history here.

18 JUDGE WEDEKIND: Okay. So, you have no objection to what
19 he just described as the history?

20 MR. BERUL: I don't.

21 JUDGE WEDEKIND: Okay. So, you agree with that,
22 basically? That's the -- that's -- you have no objection --

23 MR. BERUL: I agree --

24 JUDGE WEDEKIND: -- to it, that's fine.

25 MR. BERUL: -- I just want to make it absolutely clear

1 that we never agreed to any of this.

2 JUDGE WEDEKIND: And, he said --

3 MR. BERUL: I think --

4 JUDGE WEDEKIND: -- unilateral implementation; I think
5 that's what he said, right?

6 MR. BERUL: Yeah.

7 MR. ABRAHMS: I don't think I said the word unilateral,
8 but I did say we implemented.

9 JUDGE WEDEKIND: You implemented, okay. Did you have the
10 Union's agreement to implement?

11 MR. ABRAHMS: Well --

12 JUDGE WEDEKIND: Was it a unilateral implementation or
13 not?

14 MR. ABRAHMS: Yes, I think that it would probably be
15 classified as a unilateral implementation.

16 JUDGE WEDEKIND: Okay.

17 MR. ABRAHMS: The letter, I think, explains what is now
18 Employer's Exhibit 15 what was being implemented and
19 without --

20 JUDGE WEDEKIND: I see, okay.

21 MR. ABRAHMS: -- dragging this on further, there were
22 other discussions that were left open as -- with the letter,
23 but --

24 JUDGE WEDEKIND: Okay. So, actually I liked having that
25 history in, because I've been trying to figure out in my own

1 mind how this happened given the fact that you have a
2 collective bargaining relationship, et cetera and you just got
3 a new contract; I don't know if that's in the record. But, you
4 know, that helps. As to the exhibits themselves, given the
5 stipulation I'm not sure it's necessary. You do want these in?

6 MR. ABRAHMS: We do want them in, because they do refer
7 specifically to the hospitals -- that it's a uniform badge
8 reel.

9 JUDGE WEDEKIND: Yeah. I'm going to let them in, that's
10 fine. Your -- your only objection is relevance, General
11 Counsel?

12 MS. PARKER: Yes.

13 JUDGE WEDEKIND: Okay. So, 14 and 15 are received.

14 **(Employer Exhibit Number 14 and 15 Received into Evidence)**

15 JUDGE WEDEKIND: You have some more?

16 MR. ABRAHMS: No, other than that factual stipulation I
17 offered.

18 JUDGE WEDEKIND: Okay. So, that's it? Okay. And, do you
19 have another witness you'd like to --

20 MR. ABRAHMS: I do --

21 JUDGE WEDEKIND: -- call?

22 MR. ABRAHMS: -- hopefully briefly.

23 JUDGE WEDEKIND: Okay.

24 MR. ABRAHMS: So, we would call Cinthya Rocha to the
25 stand.

1 JUDGE WEDEKIND: Ms. Rocha, you're still under oath.

2 Whereupon,

3 CINTHYA ROCHA

4 having been previously sworn, was called as a witness herein
5 and was examined and testified as follows:

6 DIRECT EXAMINATION

7 Q BY MR. ABRAHMS: Okay, so you recalled earlier in these
8 proceedings, and I believe we -- well, it's just probably
9 faster just to make sure. What's your position at the hospital
10 again?

11 A Director of Human Resources.

12 Q Okay. And, you've been in that position since how long?

13 A Two years now.

14 Q Okay. And, how long have you been at the hospital?

15 A Since July of 2010.

16 Q Okay. And, have all of your positions in the hospital
17 been in human resources?

18 A Yes.

19 Q Okay. And, what is your general roles and
20 responsibilities?

21 A I'm over employee and labor relations.

22 Q Okay. And, so that includes dealings with the California
23 Nurses Association?

24 A That's correct.

25 Q Okay. Do you also have responsibility for hospital

1 policies?

2 A Yes.

3 Q Okay.

4 MR. ABRAHMS: So, I'll cut this short here and ask if the
5 witness be provided General Counsel's Exhibits 4, 5 and 6.

6 Q BY MR. ABRAHMS: Are you familiar with each of these
7 policies?

8 A Yes.

9 Q Okay. So, let's first look at Employer Exhibit -- I'm
10 sorry, General Counsel's Exhibit 4. And, I'll bring your
11 attention to page 2, paragraph 10 that has been discussed. You
12 have -- you had been in -- sitting in the hearing room
13 throughout these proceedings, with respect to 10, which is at
14 issue in this case; what does the term pins refer to?

15 A Pins are individual -- well, pins that are provided, or by
16 different institutions; it could be a certification, it could
17 be a pin provided by the employer. I mean, there's so many
18 different types of pins.

19 Q Okay. In the context of this policy, does the -- are the
20 pins referring to any kind of pin whatsoever? Or, are they
21 referring to pins that might be placed in a particular
22 position? Or, what do they refer to?

23 A No, it's referring to only MHS approved pins.

24 Q Okay. Do they -- there's been a lot of discussion -- I
25 mean, all the discussion has been related to pins on badges.

1 A Yes.

2 Q And, how does that -- how does this paragraph tend to
3 relate to badges?

4 A That only MHS approved pins are allowed.

5 Q Okay. So --

6 A On the badges.

7 Q Okay. And, does this policy -- this -- there's some
8 testimony of whether this policy --

9 A Uh-huh.

10 Q -- applies to all hospital employees?

11 A That is correct.

12 Q Does it apply when employees are not on duty?

13 A No.

14 Q Okay. With respect to the other two policies, 5 and 6;
15 when do those apply to -- well, first, who do those apply to?

16 A Direct care providers.

17 Q Okay. When -- by the policies, when are the direct care
18 providers expected to adhere to the requirements of the policy?

19 A When they're actually providing direct patient care.

20 Q Okay. So, when they're working and providing direct
21 patient care?

22 A That is correct.

23 Q Okay. If they're working and not providing direct patient
24 care, in a meeting or that sort of thing, does it apply?

25 A No.

1 Q Okay. You were here when Theresa Stewart, Brandy Welch
2 and Elizabeth Castillo testified?

3 A Yes.

4 Q All right. Do you know them?

5 A Yes.

6 Q How do you know them?

7 A They're RN representatives.

8 Q Okay. And, RN representatives; is that the same thing as
9 a Union steward?

10 A Yes.

11 Q Okay. And, so what is your interaction with them?

12 A I interact with them through grievances, meetings with
13 employees in human resources, ongoing.

14 Q Okay. So, they would attend grievance meetings?

15 A That is correct.

16 Q On behalf of the Union or on behalf of themselves?

17 A On behalf of the Union.

18 Q Okay. And, what other kinds of meetings would you have in
19 human resources with them?

20 A Informational meetings where we actually provide
21 information to the Union whenever there's any change, or you
22 know we were informing them of different items that were
23 happening throughout the hospital.

24 Q What about employee disciplinary meetings?

25 A Oh, yeah, definitely. If the employee chooses to bring

1 them, yes.

2 Q Okay. And, now are they -- are these the only three Union
3 reps?

4 A No.

5 Q Approximately how many does CNA have?

6 A The last list I had and that I received from there,
7 there's about 50 of them.

8 Q Fifty, 5-0?

9 A Five-zero.

10 Q Okay. When the Union or the RN reps attend these
11 meetings, are they being paid by the hospital?

12 A If it's a grievance meeting, yes. If it's a meeting that
13 we're required them to be there, yes.

14 Q Okay. So, grievances are paid for; what other kinds of
15 meetings would you require them to be there for?

16 A So, if we actually ask an employee to meet them in human
17 resources, they request the actual Union representative and it
18 makes sense to have that specific Union representative, then
19 yes, then we would pay them for that time.

20 Q Okay. And, would they be required to be in uniform for
21 those meetings that you're paying them for?

22 A No.

23 MR. BERUL: I want to object to the relevance of the line
24 of questioning considering Union representation and the roles
25 and duties of the nurse representative, I don't see how that's

1 germane to this dispute.

2 JUDGE WEDEKIND: Explain the relevance.

3 MR. ABRAHMS: Sure. We have three -- well, two
4 individuals that are listed in the complaint having believed
5 that they were being -- their Section 7 rights have been in
6 some way been infringed upon related to their ability to
7 display Union insignia. And, I think that while they're being
8 paid and if what -- at the hospital, how they're addressed is
9 relevant.

10 MR. BERUL: It's part of a Collective Bargaining Agreement
11 in common, and Collective Bargaining, Adam, you know that it
12 doesn't mean that it's not disparate enforcement of the policy.

13 JUDGE WEDEKIND: I'm not understanding the relevance,
14 so -- at the time that they -- their testimony was that they
15 were working as RNs at the time these events happened, right?

16 MR. ABRAHMS: That's true. But, there's also a facial
17 attack on these policies and the General Counsel is advancing
18 both a very narrow theory and a broad theory at the same time.
19 One focusing on a very impartial sentences or sentences out of
20 large policies and I think our defense in this case is that
21 there is no general right to have a specific Union button or to
22 wear a specific Union reel or something like that, that the
23 rights that are being challenged can be -- if they can be
24 enforced in some other way. Or, if exercised in some other
25 way, there's not a violation of the act.

1 MR. BERUL: It would be a good argument to bring before a
2 differently composed Board at some other time, but that's
3 current Board law.

4 MR. ABRAHMS: Oh, I think Charging Party's statement
5 actually confirms our -- that why this is germane, we have the
6 right to break that defense and whomever sitting on the Board
7 has the right to hear it.

8 MR. BERUL: Yeah.

9 MR. ABRAHMS: Including the -- Your Honor.

10 MR. BERUL: In light --

11 JUDGE WEDEKIND: Well, but the fact that they can wear
12 them at a grievance meeting, that's not what they wanted,
13 that's not the point. The point is they want to wear when
14 they're on the job.

15 MR. ABRAHMS: Okay. And, I think that we can get to
16 testimony that they wear it on the floor.

17 JUDGE WEDEKIND: Okay. Well, that would be more relevant
18 then what they do in a grievance meeting.

19 MR. ABRAHMS: Okay.

20 Q BY MR. ABRAHMS: Have you --

21 MR. BERUL: Well, what I would -- it's important to keep
22 in mind that whether somebody takes it upon themselves to
23 continue to wear Union insignia is irrelevant to the 8A1
24 analysis of what the reasonable RN in the bargaining unit --
25 the reasonable employee would -- how they would read this

1 language that is at issue in this case. And, the language
2 speaks for itself and I think instances of employees wearing
3 Union insignia are not relevant to in inquiry concerning the
4 facial validity of language.

5 JUDGE WEDEKIND: Well, let's say if only we had -- if we
6 only had 6B of the complaint. So, the only role we had in the
7 complaint was 6B of the rule that said that -- well, actually
8 that wouldn't apply I suppose, but the point is that if the
9 facts were that the company did allow Union buttons, would we
10 be here today?

11 MR. BERUL: Well, the -- that's a hypothetical, but the
12 Union is very restricted by the Employer's policies and --

13 JUDGE WEDEKIND: Well, when you say that that --

14 MR. BERUL: -- and they --

15 JUDGE WEDEKIND: -- kind of begs the question --

16 MR. BERUL: -- well, the employees --

17 JUDGE WEDEKIND: -- doesn't it?

18 MR. BERUL: -- the employees are very restricted by the
19 employees policies and a rule aside from that, that a
20 reasonable employee might raise even if it's not the intent of
21 the employer just like in the cases that -- where employers
22 have had to go and redo the -- their social media stuff where
23 they maybe didn't intend something -- the way it's written does
24 affect employees. And, you know, words matter and --

25 JUDGE WEDEKIND: Okay. I follow you with respect to 6A,

1 because their saying only -- you have to basically get
2 approved, okay. So, I get that. And, it might not just be a
3 Union, it could be anyone --

4 MR. BERUL: Right.

5 JUDGE WEDEKIND: -- going to wear a button that's Section
6 7 protected activity.

7 MR. BERUL: Sure.

8 JUDGE WEDEKIND: I get that. And, the second rule only
9 deals specifically, I think, with the badge reel, correct?

10 MR. BERUL: Right.

11 JUDGE WEDEKIND: Okay. And, then we have these two
12 individuals that were told allegedly to take -- to switch out
13 the badge reels while they were on duty?

14 MR. BERUL: Yeah, I --

15 JUDGE WEDEKIND: And, so now you want to show -- you want
16 to put on testimony that the company allows Union buttons on
17 the floor?

18 MR. ABRAHMS: Well, not Union buttons per se, but Union
19 insignia on the floor --

20 JUDGE WEDEKIND: On the floor.

21 MR. ABRAHMS: -- and the -- and I think our argument is --
22 well, I think counsel for the Charging Party made a point that
23 when he was talking about how a reasonable employee might
24 react; if I have employees walking up and down the hall wearing
25 CNA T-shirts and CNA jackets --

1 JUDGE WEDEKIND: Uh-huh.

2 MR. ABRAHMS: -- I certainly don't feel restrained in my
3 section 7 activity. And, I think that is a valid point that we
4 get to make, in terms of how an employee would read this rule.

5 MR. BERUL: Well, if a brave employee's willing to stick
6 their neck out despite the Employer's policies that says only
7 MHS approved pins, badges and et cetera can be worn, and at the
8 threat of discipline, that's hardly comfort for the average
9 reasonable employee. That -- there's decades of Board law in
10 this area.

11 JUDGE WEDEKIND: Well, it is a hospital and there's a
12 patient area and perhaps the company could have a policy that
13 said, anything goes Union related as long as it's only one inch
14 big and doesn't have any offensive language, you know? And,
15 then you know --

16 MR. BERUL: Well --

17 JUDGE WEDEKIND: -- I don't -- I'm going to overrule the
18 objection for now, we can go on and on about this for a long
19 time. I'm not sure it fits into current Board law, but I don't
20 want this case to be remanded back and you'll have to come back
21 from the Court of Appeals. So, let's just get it in and we'll
22 go from there.

23 MR. BERUL: Okay.

24 Q BY MR. ABRAHMS: Okay. Now, I got to remember what we're
25 talking about.

1 MR. BERUL: I stopped you when you guys --

2 JUDGE WEDEKIND: But, I don't think what happens on a
3 grievance meeting is relevant. I want to hear about what
4 happens --

5 MR. ABRAHMS: Okay.

6 JUDGE WEDEKIND: -- on the floor or --

7 Q BY MR. ABRAHMS: Do these Union reps also have an ability
8 walk on the patient care units when they're not working?

9 A Yes.

10 Q And, do they -- as far as you know, do they have
11 responsibilities to meet with management or supervision or
12 employees on the units for various things related to their
13 Union duties?

14 A Yes.

15 Q Are you aware whether or not these reps have ever worn any
16 type of Union insignia?

17 A Yes.

18 Q What types of things have you seen?

19 A Over the years, lanyards, pins, the reels, sweater,
20 jackets, shirts, I mean I've seen a lot of different things.

21 Q Okay. So, you said over the years, I want to restrict
22 you --

23 A Okay.

24 Q -- to the time since General Counsel's 5 and 6 have been
25 policies, since the new uniform and --

1 A Uh-huh.

2 Q -- appearance policies. So, December 1st of 2014; since
3 then have you seen that?

4 A Yes.

5 Q How often would you say you see a Union rep wearing some
6 Union related insignia at the hospital?

7 A Very often.

8 Q Is there any violation of policy if any of these Union
9 reps walk -- are on the patient care unit wearing a CNA jacket?

10 A No.

11 Q As long as they're not in the -- as long as they're not
12 working in their patient care role?

13 A That is correct.

14 Q Okay. And, have you actually seen Ms. Stewart, Ms. Welch
15 and Ms. Castillo in Union -- with Union insignia?

16 A Yes.

17 Q Both in human resources and in the patient care areas?

18 A I've see Ms. Brandy Welch, I've seen Theresa Stewart, I
19 don't know about Elizabeth Castillo.

20 Q Okay.

21 JUDGE WEDEKIND: But, his question was in both areas?

22 THE WITNESS: Yes.

23 JUDGE WEDEKIND: Okay.

24 THE WITNESS: Oh, yes.

25 Q BY MR. ABRAHMS: Okay. And, where is human resources?

1 A The ground floor.

2 Q Okay. It's in the main hospital?

3 A It's on the side of the hospital, so it's not by the main
4 lobby, no.

5 Q In the same building?

6 A Yes.

7 Q Okay. And, so if somebody were to come to the meetings
8 they would have to -- how would an -- these meetings you
9 referred to, would they walk through the hospital hallways and
10 so forth and --

11 A Yes.

12 Q Approximately how many grievance meetings do you have --
13 or one of these meetings where somebody comes into your office,
14 one of these Union reps, a week?

15 A I mean it could be once a day, it could be twice a day, it
16 just depends what's going on. It could be ten times a week.

17 Q So, approximately ten times a week?

18 A Yeah. I mean --

19 Q And, percentage wise, approximately how many of those
20 times do you think somebody -- well, first of all, is it your
21 understanding that when they come into your office, that they
22 also were visiting the patient care floors on the same days?

23 A A lot of the times, they tell me. Because, they do tell
24 me that.

25 Q Okay. And, approximately how many times that you see

1 the --

2 MR. BERUL: I'm going to object to the -- and ask to be
3 stricken the hearsay as to what's been told to the witness.

4 JUDGE WEDEKIND: Establish a foundation, otherwise it
5 won't be --

6 Q BY MR. ABRAHMS: Why would they tell you where they have
7 been?

8 A So, sometimes they come down and say, hey, Cinthya,
9 there's an issue going on on this floor, we just came from
10 there, you know, can you look into it? So, that's how we
11 communicate a lot too.

12 Q So, they'll find out whatever the labor relations issue is
13 by being on the floor and then they'll --

14 A Correct.

15 Q -- come down and talk to you about it?

16 A A lot of the times that's how it happens.

17 Q Okay. What percentage of the time that you have these
18 reps come into your office, would you say they're wearing some
19 portion of Union insignia?

20 A I would say at least 50 percent of the time.

21 Q Okay. Does -- is there anything in either General
22 Counsel -- well, actually, in either 4, 5 or 6, General
23 Counsel's Exhibits 4, 5 or 6 that specifically deals with
24 wearing Union insignia?

25 A No.

1 Q You were here through the testimony that has been offered
2 over the last two days about various instances where somebody
3 was wearing either a badge reel that was not the uniform,
4 Memorial care badge reel, or that they had some non Memorial
5 care -- or non-certification care pin on their badges?

6 A Uh-huh.

7 Q You heard that testimony?

8 A Yes.

9 Q All of those non Memorial care -- well, first, take it one
10 by one; the Memorial care badge reels, the non Memorial care
11 badge reels that were offered, including the non -- the ones
12 that were not Union related; are those allowed under the
13 appearance policy for a patient care nurse --

14 MR. BERUL: I'm going to object, because I'm not sure that
15 there have been any that were non Union related as to badge
16 reels.

17 MR. ABRAHMS: Well, I can go -- I was trying to be quick.

18 MR. BERUL: I'm sorry to be difficult.

19 MR. ABRAHMS: That's fine, no that's okay.

20 Q BY MR. ABRAHMS: Well, there was -- there was some -- tell
21 me -- if you need to see them, let me know, but there was some
22 discussion about a badge reel that was made out of -- that
23 looked like a flower out of different medicine caps --

24 A Uh-huh.

25 Q -- is that --

1 A I remember that.

2 Q Is that permitted by the policy?

3 A No.

4 Q And, there was discussion about a mermaid or some other
5 kind of cartoon badge reel; do you remember that?

6 A Yes, I do.

7 Q And, any of those badge reels that were discussed; are
8 they allowed under the policy?

9 A No.

10 Q Okay. Do you doubt that there's an occasion that somebody
11 might be wearing it out on the floor?

12 A I don't doubt it.

13 Q Why don't you doubt it?

14 A Because, we're a huge -- we have a huge number of
15 employees, it's a huge institution.

16 Q And, do you know whether -- I think of primarily in the
17 military, but I'm sure there's other employers that line people
18 up and inspect their uniforms; does the hospital do that?

19 A No.

20 (Counsel confer)

21 Q BY MR. ABRAHMS: Yeah, one -- actually, quick question.
22 With respect to the uniform policies, the uniform and the
23 appearance policy --

24 A Uh-huh.

25 Q -- are those available on the intranet?

1 A Yes, they are.

2 Q And, how are they accessed? How can an employee access
3 them?

4 A Going to -- as easily you're going into the intranet,
5 which is available for everyone and every single computer in
6 all the stations. And, you go into policies and all the
7 policies are there.

8 Q Okay. Is there any --

9 A And, there's patient care policies and patient direct
10 policies and non-patient direct policies.

11 Q Okay. Is there a -- there was some discussion about
12 ordering uniforms and there's a -- some way to order the
13 uniform --

14 A Oh --

15 Q -- on the intranet?

16 A -- yes, definitely. They are actually there also.
17 There's a specific icon that they just go into that, and it
18 says, uniforms, they go into that and everything's in there
19 including the policies, everything else that comes with the
20 uniforms.

21 Q Okay.

22 (Counsel confer)

23 MR. ABRAHMS: One second, I'm sorry. I don't have
24 anything further.

25 JUDGE WEDEKIND: Cross?

1 MS. PARKER: May I have just a couple minutes off the
2 record? It will be quick.

3 (Off the record at 4:19 p.m.)

4 JUDGE WEDEKIND: Cross?

5 MS. PARKER: General Counsel has no cross for this
6 witness.

7 MR. BERUL: I have just a couple of questions, if I could
8 just find which one is three --

9 **CROSS-EXAMINATION**

10 Q BY MR. BERUL: Good afternoon, Ms. Rocha, I'm Micah Berul,
11 I don't know if I introduced myself, we may have briefly;
12 counsel for the Union.

13 A Okay.

14 Q So, in your testimony, you were discussing GC Exhibit 4,
15 do you still have that in front of you?

16 A Yes.

17 Q And, you were talking about paragraph 10 on page 2.

18 A Yes.

19 Q Now, the word badges, it does not say identification
20 badges, does it?

21 A No.

22 Q And, with regard to the word pins, it doesn't say pins on
23 badges, does it?

24 A No.

25 Q Okay.

1 MR. BERUL: Nothing further.

2 JUDGE WEDEKIND: I just want to clarify something, I hope
3 I'm not opening up a can of worms, but I think Mr. Berul made a
4 comment during direct examination; is there an agreement with
5 the Union about their right to -- Union representative's right
6 to wear Union insignia when they're on Union business in the
7 hospital?

8 THE WITNESS: I've never heard of an agreement, but it's
9 never been challenged. I mean it's their right to do that.

10 JUDGE WEDEKIND: Okay. Are you involved in the Collective
11 Bargaining Agreement?

12 THE WITNESS: Yes.

13 JUDGE WEDEKIND: Okay. And, is there any provision in
14 that agreement about the right of representatives to wear Union
15 insignia when they're on Union business in the hospital?

16 THE WITNESS: I don't think it's that specific that says
17 that. It just talks about representatives having the right to
18 walk in the hospital and go into different areas of the
19 hospital.

20 JUDGE WEDEKIND: Okay.

21 THE WITNESS: Except where the patients are.

22 JUDGE WEDEKIND: Okay. Now, I don't accept counsel's
23 statement as evidence, unless it's an admission, but I -- there
24 was a comment and I just wanted to clarify it. Any follow-up
25 on my questions?

1 MR. BERUL: I don't.

2 JUDGE WEDEKIND: Okay.

3 MR. ABRAHMS: No.

4 JUDGE WEDEKIND: Okay, all right. Thank you very much,
5 Ms. Rocha. Does Respondent rests?

6 MR. ABRAHMS: We're going to ask for judicial notice to be
7 taken of -- just because there's been some discussion about it;
8 of the prior charge that was filed and this one is marked as
9 Exhibit 16. We'll ask for judicial notice of -- withdrawal as
10 well. We would rest.

11 JUDGE WEDEKIND: Okay, and what is the relevance?

12 MR. ABRAHMS: I give you -- it's just to -- it really kind
13 of follows on the other stipulations that we discussed, but
14 there is a statement against interest in the charge signed by
15 Mr. Berul that the policy at issue was implemented on this day,
16 on December 1st. So --

17 JUDGE WEDEKIND: Which policy?

18 MR. ABRAHMS: Well, I mean it doesn't specify the policy,
19 so I think it can -- but, based on the other letters that were
20 just discussed, it would be the policy that was implemented on
21 December 1st; the two policies that were talking about. Of
22 2014.

23 JUDGE WEDEKIND: The statement against interest with
24 respect to the amendment to the complaint?

25 MR. ABRAHMS: Correct.

1 JUDGE WEDEKIND: Okay. Any objection to the --

2 MR. BERUL: Oh, it's a complete objection. I mean this is
3 a 8A5 charge, Your Honor, as you can see. Unfortunately, the
4 region did not agree with the -- my argument in the case, has
5 no bearing on the 8(a)1 at issue in this case --

6 JUDGE WEDEKIND: We'll talk about the statement against
7 interest. He says that's the reason he's putting it in.

8 MR. BERUL: As a statement? I don't understand the basis
9 how it could be a statement against interest. We -- as far as
10 what was implemented, I thought you were saying, Adam, where it
11 was -- you were asking for judicial notice --

12 MR. ABRAHMS: I just noticed that it was filed and
13 withdrawn and that it's in here, in terms of the implementation
14 date of December 1, 2014.

15 MR. BERUL: Well, but we already had discussed and there
16 were multiple issues that were added, in my recollection at
17 that time. This is history that's charged and I believe some
18 of this is in the -- might be in the formal papers already with
19 the Board's dismissal --

20 MS. PARKER: I'm looking.

21 MR. ABRAHMS: They did not put this in the -- oh, well you
22 know what, quite honestly it may be --

23 MR. BERUL: Because, I think --

24 MR. ABRAHMS: -- it may be in the MSJ.

25 MS. PARKER: Yeah, that's what I'm looking.

1 MR. BERUL: I think it's in your motion.

2 JUDGE WEDEKIND: My inclination is to reject them. You
3 know, even if the Charging Party knew about the rules, it's the
4 General Counsel that decided to add it to the complaint. I
5 believe the Board's policy as maintenance as a continuing
6 violation; it wouldn't be a 10B issue. The documents
7 themselves are not relevant in my view. You're free to put
8 them in, I rejected Exhibit 12, that's what you'd like to do.

9 MR. ABRAHMS: Thank you, Your Honor.

10 JUDGE WEDEKIND: Along with Exhibit 9; do you want that in
11 there too?

12 MR. ABRAHMS: Yeah, sure.

13 JUDGE WEDEKIND: Okay. So --

14 MR. ABRAHMS: Thank you.

15 JUDGE WEDEKIND: -- there'll be three exhibits in the
16 rejected exhibit file; 9, 16 and 17.

17 **(Employer Exhibit Number 16 and 17 Rejected)**

18 THE COURT REPORTER: Do you have an extra 17?

19 MR. ABRAHMS: Oh, I'm sorry.

20 MR. BERUL: I never got a 17.

21 MR. ABRAHMS: You both, neither of you did?

22 MS. PARKER: No, I got one.

23 JUDGE WEDEKIND: Okay. Anything else from Respondent?

24 MR. ABRAHMS: Nothing.

25 JUDGE WEDEKIND: Okay. Anything on the other side;

1 General Counsel, Charging Party?

2 UNIDENTIFIED SPEAKER: No.

3 JUDGE WEDEKIND: Okay. We're done. Thank you very much.

4 All right. I'm inclined to give 30 days for briefs, until June
5 24th; that's a Friday I believe. Actually, it may be 31 days.
6 Again, file them with the San Francisco office electronically
7 preferably.

8 MR. ABRAHMS: Your Honor, I don't think that there's going
9 to be an issue here, but I'm technically supposed to be in a
10 three-week jury trial starting on the 6th -- or the 7th of June
11 through the 24th.

12 JUDGE WEDEKIND: Uh-huh.

13 MR. ABRAHMS: If -- though I assume my esteemed
14 colleague's going to do most of this, if we could have maybe
15 two days after that, so the 28th or the 29th, that would be --
16 just to make sure that we --

17 JUDGE WEDEKIND: That's fine, sure. I can -- the most I
18 can give you is 35, so --

19 MR. ABRAHMS: Yeah, we'd be fine with the 29th, if that
20 works for --

21 JUDGE WEDEKIND: So -- okay. Wednesday the 29th it is.

22 MS. PARKER: That's fine.

23 JUDGE WEDEKIND: All right, thank you very much for your
24 professionalism. I am looking forward to the briefs, I think
25 they're going to be very helpful in this case, particularly

1 because it's a hospital, because we may have some unusual or
2 different circumstances in this case. Thank you.

3 MR. BERUL: Thank you.

4 MS. PARKER: Thank you.

5 JUDGE WEDEKIND: Off the record.

6 **(Whereupon, the hearing in the above-entitled matter was closed**
7 **at 4:33 p.m.)**

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C E R T I F I C A T I O N

2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 21, Case Number
4 21-CA-157007, Long Beach Memorial Medical Center Inc. D/B/A
5 Long Beach Memorial Medical Center & Miller Children's and
6 Women's Long Beach and California Nurses Association/National
7 Nurses United (CNA/NNU) at the National Labor Relations Board,
8 Region 21, 888 South Figueroa Street, Los Angeles, California
9 90017, on Tuesday, May 24, 2016, at 9:05 a.m. was held
10 according to the record, and that this is the original,
11 complete, and true and accurate transcript that has been
12 compared to the reporting or recording, accomplished at the
13 hearing, that the exhibit files have been checked for
14 completeness and no exhibits received in evidence or in the
15 rejected exhibit files are missing.

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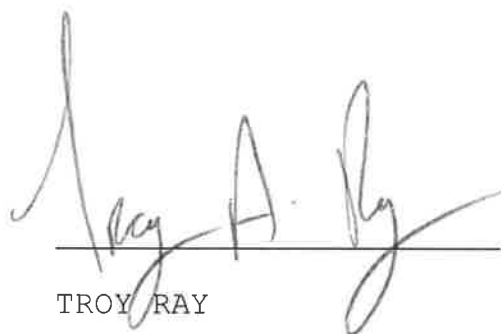
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A handwritten signature in black ink, appearing to read "Troy A. Ray", is written over a horizontal line.

TROY RAY

Official Reporter